A DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1918,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE BARRISTER-AT-LAW, ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1919

Price Four Rupees.
English Price Six Shillings.

Agents for the Sale of Books Published by the Superintendent of Government Printing India, Calcutta.

IN EUROPE.

Constable & Co., 10, Orange Street, Leicester Square, London, W.C.

Kegan Paul, Trench, Trübner & Co., 68-74, Carter Lane, E.C., and 25, Museum Street, London, W.C.

Bernard Quaritch, 11, Grafton Street, New Bond Street, London, W.

P. S. King & Sons, 2 & 4, Great Smith Street, Westminster, London, S.W.

H. S. King & Co., 65, Cornhill, E.C., and 9, Pall Mall, London, W.

Grindlay & Co., 54, Parliament Street, London, S.W.

Luzac & Co., 46, Great Russell Street, London, W.C.

W. Thacker & Co., 2, Creed Lane, London, E.C.

T. Fisher Unwin, Ltd., 1, Adelphi Terrace, London, W.C.

Wm. Wesley & Son, 28, Essex St., Strand, London.

B. H. Blackwell, 50 & 51, Broad Street, Oxford.

Deighton Bell & Co., Ltd., Cambridge.

Oliver and Boyd, Tweeddale Court, Edinburgh.

E. Ponsonby, Ltd., 116, Grafton Street, Dublin.

Ernest Leroux, 28, Rue Bonaparte, Paris.

Martinus Nijhoff, The Hague, Holland.

IN INDIA AND CEYLON.

Thacker, Spink & Co., Calcutta and Simla.

Newman & Co., Calcutta.

R. Cambray & Co., Calcutta.

S. K. Lahiri & Co., Calcutta.

B. Banerjee & Co., Calcutta.

The Indian School Supply Depôt, 309, Bow Bazar Street, Calcutta, and 226, Nawabpur, Dacca.

Butterworth & Co. (India), Ltd., Calcutta.

Rai M. C. Sarcar Bahadur & Sons, 90-2A, Harrison Road, Calcutta.

The Weldon Library, 57, Park Street, West, Calcutta.

Standard Literature Company, Limited, Calcutta.

Lal Chand & Sons, Calcutta.

Higginbotham & Co., Madras.

V. Kalyanarama Iyer & Co., Madras.

G. A. Natesan & Co., Madras.

S. Murthy & Co., Madras.

Thompson & Co., Madras.

Temple & Co., Madras.

P. R. Rama Iyer & Co., Madras.

Vas & Co., Madras.

E. M. Gopalakrishna Kone, Madura.

Thacker & Co., Ltd., Bombay.

A. J. Combridge & Co., Bombay.

D. B. Taraporevala, Sons, & Co., Bombay.

Mrs. Radhabai Atmaram Sagoon, Bombay.

Sunder Pandurang, Bombay.

Gopal Narayan & Co., Bombay.

Ram Chandra Govind & Son, Kalbadevi, Bombay.

The Standard Bookstall, Karachi.

Mangaldas Harkisandas, Surat.

A. H. Wheeler & Co., Allahabad, Calcutta and Bombay.

N. B. Mathur, Supt., Nazir Kanun Hind Press, Allahabad.

Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore and Allahabad.

Rama Krishna & Sons, Lahore.

Supt., American Baptist Mission Press, Rangoon.

Manager, the "Hitavada", Nagpur.

S. C. Talukdar, Proprietor, Students and Company, Cooch Behar.

A. M. & J. Ferguson, Ceylon.

Manager, Educational Book Depôts, Nagpur and Jubbulpore.*

Manager of the Imperial Book Depôt, 63, Chandney Chauk Street, Delhi.*

Manager, "The Agra Medical Hall and Co-operative Association, Ltd." (Successors to A. John & Co., Agra.)*

Supt., Basel Mission Book and Tract Depository, Mangalore.*

P. Varadachary & Co., Madras.*

H. Liddell, Printer, etc., 7, South Road, Allahabad.*

Ram Dayal Agarwala, 184, Katra, Allahabad.*

D. C. Anand & Sons, Peshawar.*

Manager, Newal Kishore Press, Lucknow.*

* Agents for the sale of Legislative Department publications only.

PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836—1909. It contains the cases reported in the four Series of the Indian Law Reports for 1918, the Law Reports Indian Appeals and the Calcutta Weekly Notes for the year 1917-18.

The different sets of Law Reports in which the same cases have been reported, are specifically noted in the "Table of Cases" published with this volume.

For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list arranged in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA:
The 16th July 1919.

CONTENTS.

		PAGE
THE HIGH COURT, CALCUTTA	1918	vii
THE HIGH COURT, BOMBAY		vii
THE HIGH COURT, MADRAS		viii
THE HIGH COURT, ALLAHABAD		viii
THE PRIVY COUNCIL		viii
TABLE OF REPORTS DIGESTED		ix
TABLE OF HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES		xi
TABLE OF CASES IN THE DIGEST		xix
DIGEST OF CASES		Col. 1

THE HIGH COURT, CALCUTTA, 1918.

CHIEF JUSTICE :

The Hon'ble SIR LANCELOT SANDERSON, KT., K.C.

PUISNE JUDGES :

The Hon'ble SIR JOHN G. WOODROFFE, KT.
" " " ASUTOSH MOOKERJEE, KT., C.S.I.
" " " CHARLES W. CHITTY, KT.
" " E. E. FLETCHER.
" " N. R. CHATTERJEA.
" " W. TEUNON.
" " T. W. RICHARDSON.
" " SIR ASUTOSH CHAUDHURI, KT.
" " C. P. BEACHCROFT.
" " H. WALMSLEY.
" " W. E. GREAVES.
" " B. B. NEWBOULD.
" " NAWAB SIR SHAMS-UL-HUDA, K.C.I.E.
" " G. C. RANKIN (*Additional*).
" " A. H. CUMING (*Offg.*).
" " M. SMITHER (*Offg.*).
" " E. B. H. PANTON (*Offg.*).

The Hon'ble T. C. P. GIBBONS, K.C., *Advocate-General.*
MR. S. R. DAS, *Standing Counsel.*

THE HIGH COURT, BOMBAY, 1918.

CHIEF JUSTICE :

The Hon'ble SIR BASIL SCOTT, KT. (*On deputation*).
" " " S. L. BATCHELOR, KT. (*Acting*).

PUISNE JUDGES :

The Hon'ble SIR S. L. BATCHELOR, KT. (*Retired*).
" " SIR F. C. O. BEAMAN (*Retired*).
" " SIR J. J. HEATON, KT.
" " N. C. MACLEOD.
" " L. A. SHAH.
" " A. B. MARTEN.
" " M. H. W. HAYWARD.
" " E. M. PRATT.
" " A. M. KAJIJI (*Acting*).
" " N. W. KEMP (*Acting*).

The Hon'ble T. J. STRANGMAN, *Advocate-General.*
MR. G. D. FRENCH, *Legal Remembrancer.*

THE HIGH COURT, MADRAS, 1918.

CHIEF JUSTICE :

The Hon'ble SIR JOHN E. P. WALLIS, KT.

PUISNE JUDGES :

The Hon'ble ABDUR RAHIM.
,, ,, SIR WILLIAM B. AYLING, KT.
,, ,, F. DUPRE OLDFIELD.
,, ,, T. SADASIVA AYYAR, *Diwan Bahadur.*
,, ,, C. G. SPENCER.
,, ,, V. M. COUTTS TROTTER.
,, ,, T. V. SESHAGIRI AYYAR.
,, ,, J. H. BAKEWELL.
,, ,, W. W. PHILLIPS.
,, ,, C. F. NAPIER (*Additional*).
,, ,, C. V. KUMARASWAMI SASTRIYAR, *Diwan Bahadur* (*Additional*).
,, ,, K. SRINIVASA AYYANGAR (*Additional*).
,, ,, C. KRISHNAN (*Offg.*).

The Hon'ble S. SRINIVASA AYYANGAR, *Advocate-General.*

THE HIGH COURT, ALLAHABAD, 1918.

CHIEF JUSTICE :

The Hon'ble SIR HENRY G. RICHARDS, KT., K.C.

PUISNE JUDGES :

The Hon'ble SIR GEORGE E. KNOX, KT.
,, ,, ,, PRAMADA CHARAN BANERJI, KT.
,, ,, WILLIAM TUDBALL.
,, ,, MUHAMMAD RAFIQ.
,, ,, THEODORE CARO PIGGOT.
,, ,, CECIL HENRY WALSH, K.C.
,, ,, SAIYID ABDUL RAOOF (*Offg.*).
,, ,, ALFRED EDWARD RYVES (*Offg.*).
,, ,, BENJAMIN LINDSAY (*Offg.*).

THE PRIVY COUNCIL, 1918.

LORD FINLAY, *Lord Chancellor.*
EARL OF HALSBURY.
EARL LOREBURN.
VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW.
LORD MOULTON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
LORD STRATHCLYDE.
LORD PHILLIMORE.
LORD STERNDALE.
SIR SAMUEL GRIFFITH, G.C.M.G.
SIR EDMUND BARTON, G.C.M.G.
SIR JOHN EDGE.
SIR CHARLES FITZPATRICK, G.C.M.G.
SIR SAMUEL EVANS, G.C.B.
SIR ARTHUR CHANNELL.
SYED AMEER ALI, C.I.E.
SIR WALTER PHILLIMORE, BART.
SIR JAMES ROSE-INNES, K.C.M.G.
SIR LAWRENCE JENKINS, K.C.I.E.

And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will. IV, c. 41, 44 Vict. c. 3, and 50 & 51 Vict. c. 70.

TABLE OF REPORTS DIGESTED.

Reports.	Period.	Number of volumes.	In what Court.	Abbreviations.
Indian Law Reports :—				
Calcutta Series, Vol. 45 .	1918	1	High Court, Calcutta, and Privy Council.	I. L. R. Calc.
Bombay Series, Vol. 42 .		1	High Court, Bombay, and Privy Council.	I. L. R. Bom.
Madras Series, Vol. 41 .		1	High Court, Madras, and Privy Council.	I. L. R. Mad.
Allahabad Series, Vol. 40 .		1	High Court, Allahabad, and Privy Council.	I. L. R. All.
Calcutta Weekly Notes, Vol. 22.	1917-18	1	High Court, Calcutta, and Privy Council.	C. W. N.
Law Reports Indian Appeals, Vol. 45.		1	Privy Council . .	L. R. I. A.
		6		

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

1918.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

ABANDONMENT OF HOLDING.
Abatement of Suit.
ABDUCTION.
Abetment of an Abetment.
Abwab.
Accessory Easement.
Account.
Account Books.
Accused.
Act.
Aden Act (II of 1864).
Adjournment.
ADMINISTRATION.
Administration Suit.
Admiralty Offences (Colonial) Act (12 & 13 Vic., c. 96).
Admissibility.
Admission.
Adoption.
Adulterated Ghee.
Adulteration.
Adverse Possession.
Affreightment.
Agency.
AGENCY RULES OF GODAVARY DISTRICT.
Agent.
Agent and Principal.
AGRA TENANCY ACT (II OF 1901).
Agreement.
Agricultural Land.
Alienation.
Alternative Charge.
AMENDED LETTERS PATENT.
Amendment of Decree.
AMENDMENT OF PLAINT.
Analogous Designs.
ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904).
ANNUITY.
Annulment Proceedings.
APPEAL.
Appeal from Order.
Appeal *in forma Pauperis*.
Appeal to High Court.
APPEAL TO PRIVY COUNCIL.
Appraisement Proceedings.
ARBITRATION.
Arbitration Act (IX of 1899).
ARBITRATION AWARD.
Arbitrator.
Arms.
ARMS ACT (XI OF 1878).
Arrears of Rent.
ASSESSMENT.
Assignment.
Assignment of Equity of Redemption.
Attachment.
ATTACHMENT BEFORE JUDGMENT.
Attestation.
Auction Purchaser.
AUTREFOIS ACQUIT.
Award.
Award of Court.

Balance Sheet.
Banker.

Banking Company.
BENAMIDAR.
Bengal Acts.
BENGAL ACT VIII OF 1869.
BENGAL TENANCY ACT (VIII OF 1885).
Bill of Exchange.
Blindness.
Bombay Acts.
BOMBAY CITY IMPROVEMENT ACT (BOM. IV OF 1898).
BOMBAY CITY MUNICIPAL ACT (BOM. III OF 1888).
Bombay Civil Circulars.
BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).
Bombay Land Revenue Code (Bom. Act V of 1879).
BOMBAY MUNICIPALITY.
Bombay Police Act (Bom. IV of 1902).
Bombay Regulation (IV of 1827).
Bond.
Breach of Contract.
British Baluchistan Regulation (IX of 1896).
BROTHEL.
Building.
Building Fine.
BURMESE BUDDHIST LAW.
By-law.

C. I. F. CONTRACT.
Calcutta Improvement Act (Beng. V of 1911).
Calcutta Improvement Tribunal.
CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).
CALCUTTA POLICE ACT (BENG. IV OF 1866).
Calls.
Cancellation.
Cancellation of Registration.
Capture of Vessel.
Cargo.
Caste Property.
Cause of Action.
CENTRAL PROVINCES TENANCY ACT (XI OF 1898).
Certificate of Succession.
Chairman.
Char Lands.
Charitable Trust.
CHAUKIDARI CHAKARAN LANDS.
Chief Presidency Magistrate.
CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876).
CHRISTIAN MARRIAGE ACT (XV OF 1872).
CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898).
Civil Court.
Civil and Criminal Contempt.
CIVIL AND REVENUE COURTS.
Civil Courts Act (XII of 1887).
CIVIL PROCEDURE CODE ACT (XIV OF 1882).
CIVIL PROCEDURE CODE (ACT V OF 1908).
Claim Proceeding.
CO-OPERATIVE SOCIETIES ACT (II OF 1912).
Co-operative Society.
Co-respondent.
CO-SHARERS.
Collector.
Collusion.
Commission.
COMMISSION AGENCY.
Commission Agent.
Commitment.
Committal Proceedings.
COMMON CARRIER.
Commutation.
COMPANIES ACT (VI OF 1882).
COMPANIES ACT (VII OF 1913).
COMPANY.
Compensation.
Complaint.
COMPROMISE.
Computation of Time.
Conciliator's Certificate.
Condemnation of Vessel.
CONFESSION.
Congenital Blindness.
Consent.
CONSIDERATION.
Conspiracy.
Construction.
Construction of Documents.
Contempt.
CONTEMPT OF COURT.
Contentious Matter.
CONTRACT.
CONTRACT ACT (IX OF 1872).
CONTRACT FOR SALE.
Contracts, C. I. F.
Contribution.
CONTRIBUTION, SUIT FOR.
Contributory.
Controller.
Conveyance.
Coparceners.
COSTS.
COURT-FEE.
COURT-FEES ACT (VII OF 1870).
Court of Record.
COURT OF WARDS ACT (BENG. IX OF 1879).
COURT OF WARDS ACT (MAD. II OF 1902).

Court Sale.
Covenant.
Criminal Misappropriation.
CRIMINAL PROCEDURE CODE (ACT V OF 1898).
Criminal Prosecution.
Criminal Trespass.
Cross-objections.
Crown Debt.
Crown Grants Act (XV of 1895).
Cruelty.
Culpable Homicide.
Custody.
CUSTOM.
CUSTOM OR USAGE.
CUSTOMARY LAW OF SOUTH CANARA.

Damages.
Darpatni.
Date of Sale.
Debt.
Declaration.
DECLARATORY DECREE.
DECREE.
Decree for Injunction.
Decree-holder.
Defamation.
Default.
DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).
Delay.
DEPOSITION.
Deshpandegiri Cash Allowance.
DESIGN.
Director.
Discharge.
Discovery.
Discretion.
Discretion of Court.
Dismissal for Default.
Dismissal of Suit.
Dissolution of Partnership.
DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).
District Municipalities Act (Mad. IV of 1884).
DIVORCE.
Divorce Act (IV of 1869).
Divorce Court Rules (English.)
Document.
Documentary Evidence.
Dvyamushyayana Adoption.

Easement.
EASEMENTS ACT (V OF 1882).
Eastern Bengal and Assam Disorderly Houses Act (II of 1907).
Editor of Newspaper.
EJECTMENT.
EJECTMENT SUIT.
ELECTION.
Election Roll.
Embezzlement.
ENCROACHMENT.
Enemy Vessel.
ENHANCEMENT OF RENT.
Equity of Redemption.
ESTATES LAND ACT (MAD. I OF 1908).
ESTOPPEL.
EVIDENCE.
EVIDENCE ACT (I OF 1872).
EX PARTE DECREE.
Exproprietary Rights.
EXAMINATION ON COMMISSION.
Exchange.
EXCISEABLE ARTICLE.
Excise Act (Beng. V of 1909).
Excise License.
Exclusion.
EXECUTION.
EXECUTION OF DECREE.
Execution of Mortgage.
EXECUTION PETITION.
Execution Proceedings.
Execution Sale.
EXECUTOR.
Extension of Time.

Fair Comment.
False Evidence.
False Measure.
Family Custom.
Fictitious Title.
Fine (recurring).
Fixtures.
Foreclosure.
Foreign Court Decisions.
Foreign Ship.
Foreigner.
Forest.
FOREST ACT (VII OF 1878).
Forfeiture.
Forfeiture of Adoption.
Form of Warrant.
Formalities.
FRAUD.
FRAUDULENT ALIENATION.
Fraudulent Representation.
French Subject.
Frivolous or Vexatious Accusation.

Full Bench.
Full Court.

Gains by Skill.
Gains in Business.
Gains of Science or Learning.
Gambling.
General Clauses Act (X of 1897).
GENERAL CLAUSES ACT (U. P. I OF 1904).
GHATWALI TENURE.
GIFT.
Gift with Obligation.
Government of India Act, 1915.
Government Resolution.
GRANT.
Gratuitous Payment.
Grievous Hurt.
Guarantee.
Guardian.
GUARDIANS AND WARDS ACT (VIII OF 1890).
Guardianship.

Hereditary Village Offices Act (Mad. III of 1895).
High Court.
High Court, Jurisdiction of.
High Court Rules (U. P. 1908).
HIGH SEAS.
HINDU LAW.
ADOPTION.
ALIENATION.
BOND.
CONVERSION.
COPARCENERS.
CUSTOM.
DEBT.
ENDOWMENT.
FAMILY BUSINESS.
GIFT.
GRANT.
INHERITANCE.
JOINT FAMILY.
LEPROSY.
MORTGAGE.
PARTITION.
RELIGIOUS OFFICE.
REVERSIONERS.
STRIDHAN.
SUCCESSION.
SURETY.
WIDOW.
WIDOW'S ESTATE.
HINDU WIDOW.
Hindu Widow's Remarriage Act (XV of 1856).
Horoscope.
House and Town Planning Act, 1909 (9 Edw. VII, c. 44).
Hundis.
Hyderabad State.
Hypothecation.

Identity.
ILLEGAL CESS.
Immovables.
Impossibility of Performance.
Improvement Trustees.
Inam.
Inamdar.
Income Tax Act (II of 1886).
Incumbrance.
Indemnity.
Inference.
Inheritance.
INJUNCTION.
Insolvency.
INSOLVENT.
INSTALMENT DECREE.
Intent.
Intention.
Interest.
Inundated Lands.

JALKAR.
Joinder of Parties.
Joint Hindu Family.
Joint Owner.
Joshi.
Judges.
JUDGMENT.
Judi.
Judicial Discretion.
Judicial Opinion.
JURISDICTION.
JURISDICTION OF HIGH COURT.
JURISDICTION OF INFERIOR COURTS.
Jurisdiction of Magistrates.
JURY.

Kabuliyat.
Kacchi Adat.
KADIM INAMDAR.
Kidnapping.
Kidnapping out of British India.
Kittima Adoption.
Knowledge.
Konkani Mahomedans.
Kulkarni Vatan.
Kuzhikanam.

LAKHERAJ LANDS.

Lambardar and Co-sharer.
Land Acquisition.
LAND ACQUISITION ACT (I OF 1894).
LAND IMPROVEMENT LOANS ACT (XIX OF 1883).
Landlord.
LANDLORD AND TENANT.
1. ADVERSE POSSESSION.
2. LEASE.
3. NOTICE TO QUIT.
4. RENT.
5. Title.
Land Revenue.
LAND REVENUE CODE (BOM. ACT V OF 1879).
LAND TENURE.
Lands Clauses Consolidation Act (8 & 9 Vic., c. 18)
LEASE.
LEGAL PRACTITIONERS ACT (XVIII OF 1879).
Legal Representative.
Legality.
Leprosy.
Lessee.
Letters of Administration.
Letters Patent.
LETTERS PATENT, 1865.
Lex fori.
Lex Loci Contractus.
LIBEL.
License.
Lien.
LIMITATION.
LIMITATION ACT (XV OF 1877).
LIMITATION ACT (IX OF 1908).
Liquidation.
Liquidators.
LIS PENDENS.
List of Members.
Lottery.
LUNACY ACT (IV OF 1912).

Madras Acts.
MADRAS CIVIL COURTS ACT (III OF 1873).
MADRAS DISTRICT POLICE ACT (XXIV OF 1859).
Madras Hereditary Village Offices Act (III of 1895).
MADRAS RENT RECOVERY ACT (VIII OF 1865).
MADRAS REVENUE RECOVERY ACT (II OF 1864).
Madras Sale of Minors' Estate Regulation (X of 1831).
Madras Towns' Nuisances Act (III of 1889).
Magistrate.

MAHOMEDAN LAW.
DIVORCE.
DOWER.
GIFT.
INHERITANCE.
MAINTENANCE.
MARRIAGE.
MUTWALI.
PRE-EMPTION.
RELIGIOUS OFFICE.
RESTITUTION OF CONJUGAL RIGHTS.
WAKF.
MAINTENANCE.
Majority Act (IX of 1875).
Malabar Compensation for Tenants Improvements Act (I of 1900).
MALABAR LAW.
Malabar Marriage Act (IV of 1896).
Manager and Director of Newspaper Company.
Managing Member.
Marriage.
Marriage Brokage Agreement.
Married Woman.
Marz-ul-Maut.
Matrimonial Causes Act, 1857, (20 & 21 Vict., c. 85).
Medicinal Preparation.
Memorandum of Appeal.
Merchant Shipping Act (57 & 58 Vict., c. 60).
Mesne Profits.
Mineral Rights.
Mining Lease.
MINOR.
Minority.
Mirasdar.
MISDIRECTION.
MISJOINDER.
Misjoinder of Charges.
Misrepresentation.
Mitakshara.
Mokarari Lease.
Money-decree.
MORTGAGE.
1. ATTESTATION.
2. CONSTRUCTION.
3. DISCHARGE.
4. IN FAVOUR OF MINORS.
5. OF GOODS.
6. PRIOR MORTGAGE.
7. REDEMPTION.
8. SALE OF MORTGAGED PROPERTY.
9. TRANSFEREE-MORTGAGEE.
Mortgage Bond.
Mortgage Deed.

MORTGAGE SUIT.
Mother.
Motor Car.
MOTOR VEHICLE.
Motor Vehicles Act (Mad. I of 1907).
Motor Vehicles Act (VIII of 1914).
Movables.
Muafi.
Muafi Land.
Muktesar.
Municipal Account Code.
MUNICIPAL ACT, BENGAL (III OF 1884).
MUNICIPAL ELECTION.
Municipal Offence.
Municipality.
Murder.
MUTT.

Native State.
NAVIGABLE RIVER.
Negligence.
NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).
NOABAD TALUQ.
Non-confessional Statements.
NON-OCCUPANCY HOLDING.
Non-riparian Owner.
Notice.
Notification.
Novelty.

Oaths Act (X of 1873).
Obligation.
Obstruction.
OCCUPANCY HOLDING.
OCCUPANCY RAIYAT.
Octroi Duty.
Onus of Proof.
Option of Purchase.
Oral Evidence.
Origin.
Oudh Estates Act (I of 1869).
OUDH RENT ACT (XIX OF 1868).
OUDH RENT ACT (XXII OF 1886).
Owner.
Ownership.

Pakki Adat.
PALA OR TURN OF WORSHIP.
Palayam.
Pardanashin Lady.
PARTIES.
PARTITION.
Partition Act (IV or 1893).
PARTNERSHIP.
Patents and Designs Act (II of 1911).
Patni.
Payment.
PENAL CODE (ACT XLV OF 1860).
Penalty Clause.
PENSIONS ACT (XXIII OF 1871).
Pergana Register.
Perjury.
Permanency of Rent.
Personal Decree.
Personal Liability.
PESHKOSH.
Petition of Compromise.
Plaint.
Pleader's Fees.
Pleadings.
Pledge.
Police.
Possession.
POSSESSORY SUIT.
Posting of a Demand Draft
Practice
Practice and Procedure.
PRE-EMPTION.
Preference Shareholders.
Preliminary Decree.
Prescription.
Presentation.
Presidency Magistrate.
PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).
PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).
Presumption.
Prevailing Rate.
PRINCIPAL AND AGENT.
Printer.
Prior Mortgage.
Private Defence.
PRIVATE FISHERIES ACT (II OF 1889).
Private Sale.
Privilege.
Privilege of Witness.
Privy Council.
PRIVY COUNCIL, PRACTICE OF.
Prize Court.
Probate.
PROBATE AND ADMINISTRATION ACT (V OF 1881).
PROCEDURE.
Procession.
Profits.
Projection.
Promise.

PROMISSORY NOTE.
Proof.
Proof of Title.
Property.
Proprietary Estates Village Service Act (II of 1894).
Prosecution.
PROVINCIAL INSOLVENCY ACT (III OF 1907).
PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).
Proviso to Section.
PUBLIC DEMANDS.
Public Demands Recovery Act (Beng. I of 1895).
PUBLIC GAMBLING ACT (III OF 1867).
Public Officer.
Public Policy.
Public Servant.
Public Street.
Publication.
Publicity.
Punjab Laws Act, 1872.
Purchase.
Purchase Money.
Purchaser.
PURDANASHIN LADY.
Putative Father.
Putni.
Putni Lease.
PUTNI REGULATION (VIII OF 1819).
PUTNI TENURE.

Question of Fact.
Question of Law.

RAILWAY ADMINISTRATION.
RAILWAYS ACT (IX OF 1890).
RAJINAMA AND KABULIYAT.
Rash or Negligent Act.
Rateable Value.
RECEIVER.
Receiving Stolen Property.
Recitals.
RECORD-OF-RIGHTS.
RECOUPMENT.
Recovery of Rents Act (Beng. X of 1859).
Redemption.
Reference to Full Bench.
Refund.
Registration.
REGISTRATION ACT (XVI OF 1908).
REGULATIONS.
RELIGIOUS ENDOWMENTS ACT (XX OF 1863).
Religious Office.
Remand.
RENT.
RENT SUIT.
Requirements.
Representative Suit.
Repudiation of Title.
RES JUDICATA.
Residuary Legatee.
Restitution of Conjugal Rights.
Resumption.
Resumption by Government.
RESUMPTION OF LAND.
Revenue Court.
Revenue-paying Estate.
REVENUE RECOVERY ACT (MAD. II OF 1864).
REVENUE SALE.
REVENUE SALE LAW (ACT XI OF 1859).
Reversionary Heir.
Reversionary Trust.
Reversioner.
Reversioner's Consent.
REVIEW.
Review of Judgment.
REVISION.
Revision Survey.
Right of Suit.
Risk Note.
River.

SALE.
Sale Deed.
Sale in Execution of Decree.
SALE OF GOODS.
Salt Works.
Sanad.
Sanction.
SANCTION FOR PROSECUTION.
Sanction of Government.
Sarbarakars.
SEARCH WARRANT.
SECOND APPEAL.
Second Mortgage.
Security.
SECURITY FOR COSTS.
Security for good Behaviour.
Security to keep the Peace.
Self-acquired Property.
Service of Notice.
Set-off.
Settlement Proceedings.
Share-holder.
SHARES.
Scheduled Districts Act (XIV of 1874).
Shipping Documents.

Sir Land.
Slang Terms.
Small Cause Court.
Small Cause Court Suit.
Son.
Special Judge.
SPECIFIC PERFORMANCE.
SPECIFIC RELIEF ACT (I OF 1877).
Stamp.
STAMP ACT (II OF 1899).
Standard of Proof.
Stani.
Status of Tenant.
Statute 5 & 6 Geo. V., c. 61.
Step-in-aid of Execution.
Still-head Duty.
Street.
Sub-Mortgage.
Sub-soil Rights.
Substitution.
Succession.
SUCCESSION CERTIFICATE ACT (VII OF 1889).
SUIT.
Summary Settlement.
Summons.
Surety.

Taluqa.
Temple Property.
Tenancy.
Tenants in Common.
Thakbust Map.
Theft.
Thekadar.
Time-barred Debt.
TITLE.
TORT.
Touts.
Transfer.
TRANSFER OF PROPERTY ACT (IV OF 1882)
Transferability.
Transferee.
Trespass.
Trial.
Trustee.
TRUSTS ACT (II OF 1882).

Uncertainty.
Uncertified Payment.
UNDER-RAIYATI HOLDING.
Under Tenant.
United Provinces and Oudh Acts.
UNITED PROVINCES EXCISE ACT (IV OF 1910).
UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916).
UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912).
Unrecorded Confessions.
UNSETTLED PALAYAM.
Usage.
USUFRUCTUARY MORTGAGE.

Vakil.
Valuation.
Valuation of Suit.
VATANDAR JOSHI.
Vendor and Purchaser.
VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).
Voters.

Wager.
WAGERING CONTRACTS.
Waiver.
WAJIB-UL-ARZ.
War.
Warrant.
Water.
WATER RIGHT.
WAY, RIGHT OF.
Widow.
WILL.
1. CONSTRUCTION.
2. DEBATTAR.
3. PROOF OF.
4. REVOCATION.

WILL AND CODICIL.
Winding-up.
WITNESS.
Words and Phrases.
Workman.
WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).
Wrist-watch Band.
Written Statement.
Wrongful Confinement.

Zemindari.

TABLE

OF

CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A		
Abdul Hakim *v.* Bazruk Ali	22 C. W. N. 117	106
Abdul Hussein Khan *v.* Sona Dero	I. L. R. 45 Calc. 450 ; 22 C. W. N. 353 ; L. R. 45 I. A. 10	112
Abdul Rahim Mahomed *v.* Municipal Commissioner for City of Bombay.	I. L. R. 42 Bom. 462	29
Abdul Rahiman, *In re*	I. L. R. 42 Bom. 254	105
Abdul Rahman *v.* Amin Sharif	I. L. R. 45 Calc. 780	18
Abdul Razack *v.* Khandi Row	I. L. R. 41 Mad. 225	79
Abdul Razak *v.* Mahomed Hussein	I. L. R. 42 Bom. 499	79
Abdullah Ashgar Ali Khan *v.* Ganesh Dass	I. L. R. 45 Calc. 442 ; 22 C. W. N. 121	269
Abdullabhoy Lalji *v.* The Executive Committee, Aden Settlement.	I. L. R. 42 Bom. 692	17
Abhoya Sankar Mazumdar *v.* Rajani Mandal	22 C. W. N. 904	23
Abi Dhunimsa Bibi *v.* Mahammad Fathi Uddin	I. L. R. 41 Mad. 1026	204
Abinash Chandra *v.* Shekhar Chand	I. L. R. 40 All. 353	95
Abraham, E. J. Abraham *v.* Sarupchand	I. L. R. 42 Bom. 224	78
Abu Hamid Zahira *v.* Golam Sarwar	22 C. W. N. 301	16
Advi *bin* Fakirappa *v.* Fakirappa Adiveppa	I. L. R. 42 Bom. 547	145
Aftabuddin Chawdhury *v.* Basanta Kumar Mukhapadhyaya.	22 C. W. N. 427	293
Afzal Shah *v.* Lachmi Narain	I. L. R. 40 All. 7	53
Ah Foong Chinaman *v.* King-Emperor	22 C. W. N. 834	105, 128
Ahmad Khan *v.* Musammat Gaura	I. L. R. 40 All. 235	197
Ajitulla Sarkar *v.* Nandoor Mahammad	22 C. W. N. 919	52
Akhoy Kumar Mookerjee *v.* Emperor	I. L. R. 45 Calc. 720 ; 22 C. W. N. 405	304
Alagappa *v.* Muthiah	I. L. R. 41 Mad. 237	267
Alagappa Chettiar *v.* Chockalingam Chettiar	I. L. R. 41 Mad. 904	65, 255
Alagappa Chettiar *v.* Muthukumara Chettiar	I. L. R. 41 Mad. 316	53
Alok Chandra Pal *v.* Jaluram Namasut	22 C. W. N. 563	20
Ambalika Dasi *v.* Aparna Dasi	I. L. R. 45 Calc. 835	111
Ambar Ali *v.* Lutfe Ali	I. L. R. 45 Calc. 159	230
Amiruddin Ahmed *v.* Emperor	I. L. R. 45 Calc. 557 ; 22 C. W. N. 213	211
Amirulla Pramanik *v.* King-Emperor	22 C. W. N. 408	99
Ammani Amma *v.* Padmanabha Menon	I. L. R. 41 Mad. 1075	208
Ammiraju *v.* Seshamma	I. L. R. 41 Mad. 33	83
Amrit Narayan Singh *v.* Gaya Singh	I. L. R. 45 Calc. 590 ; 22 C. W. N. 409 ; L. R. 45 I. A. 35	159
Amrita Lal Roy *v.* Secretary of State for India	22 C. W. N. 769	273
Amtul Habib *v.* Muhammad Yusuf	I. L. R. 40 All. 125	62
Anakalamma *v.* Chenchayya	I. L. R. 41 Mad. 637	149

Name of Case.	Volume and Page.	Column of Digest.
Ananda Mohan Roy Chowdhury *v.* Gurudayal Saha	22 C. W. N. 965	26
Anandgir *v.* Sri Niwas	I. L. R. 40 All. 652	9
Anandi Kunwar *v.* Ram Niranjan Das	I. L. R. 40 All. 505	57
Ananga Mohan Dutta *v.* King-Emperor	22 C. W. N. 478	235
Anant Narayan *v.* Ramchandra Gangadhar	I. L. R. 42 Bom. 609	50
Anant Ram *v.* Collector of Etah	I. L. R. 40 All. 171 ; 22 C. W. N. 484	148
Anantharamayya *v.* Tukkadu	I. L. R. 41 Mad. 787	102
Annamala Chettiar *v.* Palamalai Pillai	I. L. R. 41 Mad. 265	47
Annaya Tantri *v.* Ammakka Hengsu	I. L. R. 41 Mad. 886	158
Ant Ram *v.* Mithan Lal	I. L. R. 40 All. 135	208
Appaji Ayyar, *Re*	I. L. R. 41 Mad. 644	109
Appavu *v.* Seeni	I. L. R. 41 Mad. 115	14
Arunachellam *v.* Sabapathy	I. L. R. 41 Mad. 213	169
Asa Beevi *v.* Karuppan Chetty	I. L. R. 41 Mad. 365	204
Asgar Mandal *v.* King-Emperor	22 C. W. N. 811	104
Ashraf Ali *v.* Karam Ali	22 C. W. N. 1025	225
Aslam Meah *v.* Emperor	I. L. R. 45 Calc. 816 ; 22 C. W. N. 744	75
Azimuddin Ahmed *v.* Alauddin Bhunja	22 C. W. N. 931	285
Azizur Rahaman *v.* Amin Sharif	22 C. W. N. 927	18
Aziz-ur-Rahman *v.* Hansa	I. L. R. 40 All. 670	306

B

Bai Nematbu *v.* Bai Nematullabu	I. L. R. 42 Bom. 295	186
Baidya Nath Bose *v.* Emperor	I. L. R. 45 Calc. 430 ; 22 C. W. N. 72	221
Baikantha Nath Das *v.* Mohesh Chandra Dey	22 C. W. N. 128	216
Bala Genuji *v.* Balwant Laxman	I. L. R. 42 Bom. 613	298
Balakeshwari Debi *v.* Jnanananda Banerjee	I. L. R. 45 Calc. 697 ; 22 C. W. N. 197	133
Baldeo *v.* Panna Lal	I. L. R. 40 All. 663	256
Balkrishna Sambhaji *v.* Dattatraya Mahadev	I. L. R. 42 Bom. 257	241
Balwant Singh *v.* Joti Prasad	I. L. R. 40 All. 692	292
Bandiram Mookerjee *v.* Purna Chandra Roy	I. L. R. 45 Calc. 926	169
Bani Ramchandra *v.* Jayawanti Govind	I. L. R. 42 Bom. 339	83
Bank of Upper India *v.* The Administrator-General of Bengal.	I. L. R. 45 Calc. 653 ; 22 C. W. N. 793	5
Banwari Lal *v.* Mahesh	L. R. 45 I. A. 284	125
Bapuji Narayan *v.* Bhagwant Balwant	I. L. R. 42 Bom. 357	121
Bapuji Ramchandra *v.* Guja Malu	I. L. R. 42 Bom. 246	44
Baradwaja Mudaliar *v.* Arunachala Gurukkal	I. L. R. 41 Mad. 528	191
Basiruddin Sheikh *v.* Sheikh Sadhu Tanti	22 C. W. N. 571	55
Basiruddin Thanadar *v.* Mokima Bibi	22 C. W. N. 709	255
Basudeo Roy *v.* Jugalkishwar Das	22 C. W. N. 841	150
Behari Lal Ghose *v.* Sindhubala Dasi	I. L. R. 45 Calc. 434 ; 22 C. W. N. 210	227
Bengal Provident and Insurance Co., Ld. *v.* Kamini Kumar Choudhury.	22 C. W. N. 517	44
Benimadhab Kundu *v.* King-Emperor	22 C. W. N. 740	104
Beni Madhab Sarkar *v.* Gobind Chandra Sarkar	22 C. W. N. 669	95
Bhagaban Chandra Kaibarta Das *v.* Ishan Chandra Kaibarta Das.	22 C. W. N. 831	13, 186
Bhagwandas Parasram *v.* Burjorji Ruttonji	I. L. R. 42 Bom. 373 ; L. R. 45 I. A. 29 ; 22 C. W. N. 625.	82, 299

Name of Case.	Volume and Page.	Column of Digest.
Bhairab Chandra Dutt *v.* Nandiram Agrani	22 C. W. N. 520	262
Bhana *v.* Guman Singh	I. L. R. 40 All. 384	264
Bharat Singh *v.* Tej Singh	I. L. R. 40 All. 246	9
Bhausing *v.* Chaganiram Hurchand	I. L. R. 42 Bom. 363	51
Bhicoobai *v.* Hariba Raghuji	I. L. R. 42 Bom. 556	86
Bhimangauda *v.* Hanmant Rungappa	I. L. R. 42 Bom. 689	46
Bhusan Chandra Dutta *v.* Kote-Chandpur Municipality.	22 C. W. N. 376	221
Bhushan Chandra Ghose *v.* Srikanta Banerjee	I. L. R. 45 Calc. 756	173
Bibhuti Bhusan Biswas *v.* Bhuban Ram	22 C. W. N. 1062	236
Bihari Lal *v.* Baldeo Narain	I. L. R. 40 All. 674	50
Bijoy Singha Dudhuria *v.* Krishna Behari Biswas	I. L. R. 45 Calc. 259	164
Bilas Roy Choudhuri *v.* Ram Gopal Khemkor	22 C. W. N. 719	97
Binodini Debya *v.* Hriday Nath Ghoshal	22 C. W. N. 424	248
Bipradas Pal Chowdhury *v.* Manorama Debi	I. L. R. 45 Calc. 574; 22 C. W. N. 396	171
Birdichand Jivraj *v.* The Standard Bank, Limited	I. L. R. 42 Bom. 159	74
Birendra Kishore Manikya *v.* Doulat Khan	22 C. W. N. 856	13, 122
Birendranath Roy *v.* Nripendranath Roy	22 C. W. N. 640	50
Bireswar Mukerjee *v.* Ambika Charan Bhattacharjea	I. L. R. 45 Calc. 630	183
Bisheshar Nath, *In the matter of the petition of*	I. L. R. 40 All. 147	54
Braja Sundar Deb *v.* Swarna Mahjari Dei	22 C. W. N. 433.	149
Brij Indar Singh *v.* Kanshi Ram	I. L. R. 45 Calc. 94; 22 C. W. N. 169	184
Brojendra Kishore Roy Choudhury *v.* Dil Mahmud Sarkar.	22 C. W. N. 1027	198
Brojendra Lal Das *v.* Deb Narain Tewari	I. L. R. 45 Calc. 765	37
Brooke, *v.* King-Emperor	22 C. W. N. 455	36
Buddhu Misir *v.* Bhagirathi Kunwar	I. L. R. 40 All. 216	59
Byomkesh Chakravarti *v.* Jagadiswar Rai	22 C. W. N. 304	127

C

Campbell & Co. *v.* Jeshraj Giridhari Lall	I. L. R. 45 Calc. 502	12
Capadia *v.* Capadia	L. R. 45 I. A. 257	302
Chabraj Singh *v.* Mahesh Narain Singh	I. L. R. 40 All. 572	245
Chandi Charan Giri *v.* Gadadhar Pradhan	I. L. R. 45 Calc. 336; 22 C. W. N. 165	280
Chandi Charan Nath *v.* Samla Bibi	22 C. W. N. 179	22
Chandra Kishore Roy *v.* Basarat Ali Chowdhury	22 C. W. N. 627	276
Chaturi Singh *v.* Musammat Rania	I. L. R. 40 All. 525	44
Chelimi Chetty *v.* Subbamma	I. L. R. 41 Mad. 442	157
Chidambara Pillai *v.* Rangasami Naicker	I. L. R. 41 Mad. 561	149
Chidambaranatha Thambiran *v.* Nallasiva Mudaliar	I. L. R. 41 Mad. 124	224
Chindan Nambiar *v.* Kunhi Raman Nambiar	I. L. R. 41 Mad. 577	208
Chunilal Harilal *v.* Bai Mani	I. L. R. 42 Bom. 504	42
Chunni Lal *v.* Narsingh Das	I. L. R. 40 All. 341	181
Collector of Moradabad *v.* Maqbul-ul-Rahman	I. L. R. 40 All. 434	264
Cooper, *In re*	I. L. R. 42 Bom. 119	50
Cox *v.* Cox	I. L. R. 45 Calc. 525	118
Crawford, *In re*	I. L. R. 42 Bom. 400	108

D

Dakas Khan *v.* Ghulam Kasim Khan	I. L. R. 45 Calc. 793	300

Name of Case.	Volume and Page.	Column of Digest.
Dambar Singh *v.* Kalyan Singh	I. L. R. 40 All. 109	62
Dambar Singh *v.* Munawar Ali Khan	I. L. R. 40 All. 86	253
Dastur Ali *v.* Ram Kumar Gope	22 C. W. N. 972	25
Debendra Nath Das *v.* Bibudhendra Mansingh Bhramarbar Roy.	I. L. R. 45 Calc. 805; 22 C. W. N. 674; L. R. 45 I. A. 67	21
Debendra Nath Das Gupta *v.* Registrar of Joint Stock Companies.	I. L. R. 45 Calc. 486; 22 C. W. N. 96	71
Debendra Nath Das Gupta *v.* Registrar of Joint Stock Companies.	I. L. R. 45 Calc. 490	70
Debi Prasad *v.* Badri Prasad	I. L. R. 40 All. 461	190
Debi Prasad *v.* Lewis	I. L. R. 40 All. 213	252
Delanney *v.* Pran Hari Guha	22 C. W. N. 990	161
Deo Narain Singh *v.* Sitla Bakhsh Singh	I. L. R. 40 All. 177	8
Deokinandan *v.* Gapua	I. L. R. 40 All. 512	192
Deputy Commissioner of Kheri *v.* Rani Bijai Raj Koer.	22 C. W. N. 305	304
Dhananjoy Manjhi *v.* Upendra Nath Deb Sarbadhikary.	22 C. W. N. 685	195
Dhirendra Nath Sarkar *v.* Nischintapore Company	22 C. W. N. 192	137
Dhondiram Chatrabhuj *v.* Sadasuk Savatram	I. L. R. 42 Bom. 522	250
Dhrupad Chandra Koley *v.* Hari Nath Singh Roy	22 C. W. N. 826	24, 281
Digendra Chandra Basak *v.* Ramani Mohan Goswami	22 C. W. N. 958	251
Digendra Chandra Sen *v.* Nritya Gopal Biswas	22 C. W. N. 419	96
Dinabandhu Jana *v.* Durga Prasad Jana	22 C. W. N. 362	286
Dirgaj Deo Bahadur *v.* Beni Mahto	22 C. W. N. 439	129
Dodbasappa Ramlingappa *v.* Basawaneppa	I. L. R. 42 Bom. 719	163
Dokari Joddar *v.* Nilmani Kundu	22 C. W. N. 319	195
Dorabji Jamsetji Tata *v.* Edward F. Lance	I. L. R. 42 Bom. 676	84
Doraiswami *v.* Subramania	I. L. R. 41 Mad. 188	269
Draupadi Dasya *v.* Rajkumari Dasya	22 C. W. N. 564	303
Drigpal Singh *v.* Kunjal	I. L. R. 40 All. 142	256
Durga Kanta Sarma *v.* Anto Koch	22 C. W. N. 671	55
Durga Prashad Singh *v.* Tata Iron and Steel Company	L. R. 45 I. A. 275	174
Durga Prashad Singh *v.* Tribeni Singh	L. R. 45 I. A. 251	141
Dwarika Nath Ash *v.* Priyanath Malki	22 C. W. N. 279	80

E

Ear Mahamed Shaha *v.* Heyat Mahamed Shaha	22 C. W. N. 342	192, 285
East Indian Railway Co. *v.* Kanak Behari Haider	22 C. W. N. 622	261
Elahi Baksh Kazi *v.* Emperor	I. L. R. 45 Calc. 825; 22 C. W. N. 646	116
Emperor *v.* Abas Mirza	I. L. R. 42 Bom. 396	237
Emperor *v.* Abdul Latif	I. L. R. 40 All. 416	107
Emperor *v.* Ambirsaheb Balamiya	I. L. R. 42 Bom. 406	139
Emperor *v.* Amir Hasan Khan	I. L. R. 40 All. 569	296
Emperor *v.* Babu Prasad	I. L. R. 40 All. 32	108
Emperor *v.* Badri Prasad	I. L. R. 40 All. 35	235
Emperor *v.* Bahawal Singh	I. L. R. 40 All. 79	104
Emperor *v.* Bakhtawar	I. L. R. 40 All. 282	306
Emperor *v.* Bandu Ebrahim	I. L. R. 42 Bom. 181	237
Emperor *v.* Barkat Ali	I. L. R. 40 All. 38	139
Emperor *v.* Bhimaji Venkaji	I. L. R. 42 Bom. 172	103
Emperor *v.* Chandan Singh	I. L. R. 40 All. 103	237
Emperor *v.* Chanoo Lal Bania	22 C. W. N. 1028	105
Emperor *v.* Chhote Lal	I. L. R. 40 All. 221	240

Name of Case.	Volume and Page.	Column of Digest.
Emperor *v.* Ganga Ram	I. L. R. 40 All. 24	108
Emperor *v.* Gauri Shankar	I. L. R. 40 All. 360	236
Emperor *v.* Ghulam Husain	I. L. R. 40 All. 420	16
Emperor *v.* Gulab	I. L. R. 40 All. 686	236
Emperor *v.* Harak Chand Marwari	I. L. R. 40 All. 84	236
Emperor *v.* Haribhai	I. L. R. 42 Bom. 391	238
Emperor *v.* Harkesh	I. L. R. 40 All. 507	238
Emperor *v.* Harris	I. L. R. 40 All. 119	233
Emperor *v.* Indar	I. L. R. 40 All. 372	99
Emperor *v.* Jagrup Shukul	I. L. R. 40 All. 21	101
Emperor *v.* Karim-ud-din	I. L. R. 40 All. 565	239
Emperor *v.* Kedar Nath	I. L. R. 40 All. 661	296
Emperor *v.* Khushali Ram	I. L. R. 40 All. 116	108
Emperor *v.* Lalji	I. L. R. 40 All. 140	98
Emperor *v.* Liaqat Husain	I. L. R. 40 All. 138	104
Emperor *v.* Madho	I. L. R. 40 All. 28	237
Emperor *v.* Maha Ram	I. L. R. 40 All. 393	39
Emperor *v.* Mallangowda	I. L. R. 42 Bom. 1	128
Emperor *v.* Manik Chand	I. L. R. 40 All. 105	141
Emperor *v.* Mari Parsu	I. L. R. 42 Bom. 202	106
Emperor *v.* Maturwa	I. L. R. 40 All. 517	257
Emperor *v.* Nagindas	I. L. R. 42 Bom. 454	29
Emperor *v.* Naimaddi	22 C. W. N. 572	170
Emperor *v.* Punja Guni	I. L. R. 42 Bom. 234	144
Emperor *v.* Ram Das	I. L. R. 40 All. 307	105
Emperor *v.* Ram Das	I. L. R. 40 All. 563	296
Emperor *v.* Ram Kishan	I. L. R. 40 All. 39	99
Emperor *v.* Ram Sahai	I. L. R. 40 All. 144	107
Emperor *v.* Ram Saran Lal	I. L. R. 40 All. 19	287
Emperor *v.* Sahdeo Rai	I. L. R. 40 All. 577	235
Emperor *v.* Sheo Sampat Pande	I. L. R. 40 All. 641	97
Emperor *v.* Thakur Das	I. L. R. 40 All. 41	234
Emperor *v.* Yusuf Husain	I. L. R. 40 All. 284	131
F		
Fanindra Narain Roy *v.* Kacheman Bibi	I. L. R. 45 Calc. 774; 22 C. W. N. 188	76
Fazal Rab *v.* Manzur Ahmad	I. L. R. 40 All. 425	58
Fazl Ahmad *v.* Rahim Bibi	I. L. R. 40 All. 238	204
G		
Gahar Mahamed Sarkar *v.* Pitambar Das	22 C. W. N. 814	235
Gajanand Maskara *v.* Shaik Taleb Jalaluddin	22 C. W. N. 535	15
Gammeter *v.* The Controller of Patents and Designs	I. L. R. 45 Calc. 606; 22 C. W. N. 580	117
Ganapathy Mudaliar *v.* Krishnamachariar	I. L. R. 41 Mad. 403; 22 C. W. N. 553; L. R. 45 I. A. 54	218
Ganesh Chandra Sikdar *v.* Emperor	I. L. R. 45 Calc. 82; 22 C. W. N. 328	133
Ganeshi Lal *v.* Babu Lal	I. L. R. 40 All. 374	158
Gangadas Mulji *v.* Haji Ali Mahomed Jalal	I. L. R. 42 Bom. 54	41
Gangadhar Nanda *v.* Janokimoni Dasi	22 C. W. N. 817	26

Name of Case.	Volume and Page.	Column of Digest.
Ganga Narain Dutt *v.* Indra Narain Saha	22 C. W. N. 350	156
Ganga Pershad Singh *v.* Ishri Pershad Singh	I. L. R. 45 Calc. 748 ; 22 C. W. N. 697 ; L. R. 45 I. A. 94	213
Gangayya *v.* Venkataramiah	I. L. R. 41 Mad. 454	232
Ganu *walad* Ramji *v.* Bhau *walad* Bapuji	I. L. R. 42 Bom. 512	131
Gauri Sahai *v.* Bahree	I. L. R. 40 All. 515	93
Gaurishankar Balmukund *v.* Chinnumaya	L. R. 45 I. A. 219	134
Ghulam Muhi-ud-din Khan *v.* Dambar Singh	I. L. R. 40 All. 206	198
Girdhar Das *v.* Sidheshwari Prasad Narain Singh	I. L. R. 40 All. 411	42
Gnanendra Kumar Roy Choudhry *v.* Rishindra Kumar Roy Choudhry.	22 C. W. N. 540	185
Gobardhan *v.* Munna Lal	I. L. R. 40 All. 584	43
Gobind Das *v.* Karan Singh	I. L. R. 40 All. 197	254
Gobinda Chandra Pal *v.* Kailash Chandra Pal	I. L. R. 45 Calc. 530	135
Gokul *v.* Mohri Bibi	I. L. R. 40 All. 325	57
Golam Hossain *v.* King-Emperor	22 C. W. N. 1005	238
Gopal Chandra Banerjee *v.* Mahomed Soleman Mullick.	22 C. W. N. 126	24
Gopal Chandra Das *v.* Khettra Mohan Bhunja	22 C. W. N. 933	15
Gopal Chandra Das *v.* Nadiar Chand Das	22 C. W. N. 526	65
Gopal Jayvant *v.* Shriniwas Vithal	I. L. R. 42 Bom. 734	177
Gopal Mandal *v.* Japai Sankhari	22 C. W. N. 618	23
Goswami Gordhan Lalji *v.* Goswami Maksudan Ballabh.	I. L. R. 40 All. 648	56
Gour Chandra Chuckerbutty *v.* Birendra Kishore Manikya.	22 C. W. N. 449	262
Gour Mondal *v.* Balaram Manji	22 C. W. N. 61	25
Govindan Nambudiri *v.* Moidin	I. L. R. 41 Mad. 469	286
Govindasami Pillay *v.* Municipal Council, Kumbakonam.	I. L. R. 41 Mad. 620	62
Granade Venkata Ratnam *v.* Corporation of Calcutta	22 C. W. N. 745	35
Gumanan *v.* Jahangira	L. L. R. 40 All. 518	162
Gunjeshwar Kunwar *v.* Durga Prashad Singh	I. L. R. 45 Calc. 17 ; 22 C. W. N. 74	152
Gurupada Haldar *v.* Tarit Bhusan Ray Choudhry	22 C. W. N. 158	199

H

Habib-ullah *v.* Manrup	I. L. R. 40 All. 228	227
Hajee Ismail and Sons *v.* Wilson & Co.	I. L. R. 41 Mad. 709	87
Hakim Sheikh *v.* Adwaita Chandra Das Dalal	22 C. W. N. 1021	214
Hamid Hussain *v.* Kubra Bibi	I. L. R. 40 All. 332	207
Hansraj Laddashet *v.* Anant Padmanabh	I. L. R. 42 Bom. 742	48
Harendra Chandra Bhuttacharya *v.* Gagan Chandra Das.	22 C. W. N. 325	189
Harendra Chandra Lahiri *v.* Basanta Kumar Maitra	22 C. W. N. 689	302
Haribhusan Datta *v.* Manmatha Nath Datta	I. L. R. 45 Calc. 862	230
Harihar Banerji *v.* Ramshashi Roy	L. R. 45 I. A. 222	174
Harihar Persad Bajpai *v.* Ajub Misir	I. L. R. 45 Calc. 930	175
Hari Mohan Mondal *v.* Mohini Mohan Banerjee	22 C. W. N. 130	215
Haripada Sadhukhan *v.* Anath Nath De	22 C. W. N. 758	215
Hariram Kisniram *v.* Shivabakas Ramchand	I. L. R. 42 Bom. 333	193
Harry Meredith *v.* V. K. Abdulla Sahib	I. L. R. 41 Mad. 1060	82
Hazari Khan *v.* Nafar Chandra Pal Chowdry	22 C. W. N. 479	100
Hazarimull Shohanlal *v.* Satish Chandra Ghosh	22 C. W. N. 1036	88, 283
Het Ram *v.* Ganga Sahai	I. L. R. 40 All. 615	241

Name of Case.	Volume and Page.	Column of Digest.
Het Ram *v.* Shadi Ram	I. L. R. 40 All. 407; 22 C. W. N. 1033; L. R. 45 I. A. 130	214
Higgins, F. W. *v.* Secretary of State for India	22 C. W. N. 659	172
Himatlal Maganlal *v.* Bhikabhai Amritlal	I. L. R. 42 Bom. 529	120
Hingu Singh *v.* Jhuri Singh	I. L. R. 40 All. 590	55
Huchrao Timmaji *v.* Bhimrao Gururao	I. L. R. 42 Bom. 277	147, 187
I		
Imambandi *v.* Mutsaddi	I. L. R. 45 Calc. 878; L. R. 45 I. A. 73	206
Innatunnessa Bibi *v.* Janaki Nath Sarkar	22 C. W. N. 477	79
Irshad Ali *v.* Kariman	22 C. W. N. 530	126
Isabali Tayabali *v.* Mahadu Ekoba	I. L. R. 42 Bom. 195	294
Ishan Chandra Dhupi *v.* Nishi Chandra Dhupi	22 C. W. N. 853	1
Itti Panku Menon *v.* Dharman Achan	I. L. R. 41 Mad. 488	81
J		
Jadab Chandra Moulik *v.* Manik Sarkar	22 C. W. N. 156	281
Jadu Nath Manna *v.* Pran Krishna Das	I. L. R. 45 Calc. 769	267
Jagannath Prashad Singh *v.* Syed Abdullah	22 C. W. N. 891	131
Jagardeo Singh *v.* Ali Hammad	I. L. R. 40 All. 300	8
Jagat Chandra Acharya *v.* Shyama Charan Bhuttacharya.	2 C. W. N. 550	66
Jagaveera Rama Ettappa *v.* Arumugam Chetti	L. R. 45 I. A. 195	202
Janardan Ganesh *v.* Ravji Bhikaji	I. L. R. 42 Bom. 288	120
Janardan Govind *v.* Narayan Krishnaji	I. L. R. 42 Bom. 420	199
Jhunku Lal *v.* Bisheshar Das	I. L. R. 40 All. 612	60
Jnan Chandra Das *v.* Hari Mohan Sen	22 C. W. N. 522	293
Joeenullah Bepari *v.* King-Emperor	22 C. W. N. 597	239
Joganath Marwari *v.* East Indian Railway Co.	22 C. W. N. 902	260
Joy Chandra Das *v.* Mahomed Amir	22 C. W. N. 702	253
Juranu Mahamad *v.* Jathi Mahamad	22. C. W. N. 760	59
Jurawan Pasi *v.* Mahabir Dhar Dube	I. L. R. 40 All. 198	46
Jyoti Prakash Nandi *v.* Mukti Prakash Nandi	22 C. W. N. 297	89
Jyoti Prashad Singh *v.* Kumud Nath Chatterji	22 C. W. N. 1009	259
K		
Kadirvelu Nainar *v.* Kuppuswami Naiker	I. L. R. 41 Mad. 743	140
Kailash Chandra Datta *v.* Padmakisore Roy	I. L. R. 45 Calc. 285	112
Kali Das Chaudhuri *v.* Draupadi Sundari Dassi	22 C. W. N. 104	189
Kalka Bakhsh Singh *v.* Ram Charan	I. L. R. 40 All. 630	199
Kalka Prasad and Others, *In the matter of the petitions of.*	I. L. R. 40 All. 153	179
Kallu *v.* Sital	I. L. R. 40 All. 271	132
Kallu *v.* Sital	I. L. R. 40 All. 314	7
Kalyan Das *v.* Maqbul Ahmad	I. L. R. 40 All. 497; 22 C. W. N. 866	248

Name of Case.	Volume and Page.	Column of Digest.
Kanai Lal Ghose *v.* Jatindra Nath Chandra	I. L. R. 45 Calc. 519 ; 22 C. W. N. 446	243
Kandasami *v.* Irusappa	I. L. R. 41 Mad. 102	187
Kandaswami *v.* Subramania	I. L. R. 41 Mad. 208	165
Kanhai Lal *v.* Brij Lal	I. L. R. 40 All. 487 ; 22 C. W. N. 914 ; L. R. 45 I. A. 118.	160
Kannuswami Pillai *v.* Jagathambal	I. L. R. 41 Mad. 701	61
Karachi Port Trust *v.* Mackenzie Davidson	22 C. W. N. 961	80
Karimunnessa Choudhrani *v.* Ekina Banoo	22 C. W. N. 568	207
Kasiswar Mukherjee *v.* Jyoti Kumar Mukerjee	22 C. W. N. 666	301
Kemalooti *v.* Muhamed	I. L. R. 41 Mad. 629	175
Khadirshaw Maraikar *v.* The Official Receiver, Tinnevelly.	I. L. R. 41 Mad. 30	255
Khema Rukhad, *In re*	I. L. R. 42 Bom. 664	109
Khemraj Shrikrishnadas *v.* Kisanlala Surajmal	I. L. R. 42 Bom. 5	282
Khetra Mohan Poddar *v.* Nishi Kumar Saha	22 C. W. N. 488	166, 210
Khulna Loan Co., Ld. *v.* Jnanendra Nath Bose	22 C. W. N. 145	219
Khurshed Alam Khan *v.* Rahmat-ullah Khan	I. L. R. 40 All. 68	67
King-Emperor *v.* Kabili Katoni	22 C. W. N. 809	76
King-Emperor, The *v.* Lal Bage	I. L. R. 41 Mad. 465	202
King-Emperor *v.* Rajendra Roy	22 C. W. N. 596	103
King-Emperor *v.* Romesh Chandra Gupta	22 C. W. N. 168	169
Kirpa Devi *v.* Ram Chandar Sarup	I. L. R. 40 All. 219	9
Konda Reddy *v.* King-Emperor	I. L. R. 41 Mad. 246	98
Koroth Mammad *v.* The King-Emperor	I. L. R. 41 Mad. 334	238
Koti Reddi *v.* Subbiah	I. L. R. 41 Mad. 792	48
Krishna Chandra Dutta Roy *v.* Hemaja Sankar Nandi Mazumdar.	22 C. W. N. 463	75
Krishna Das Roy *v.* Kali Tara Chowdhurani	22 C. W. N. 289	268
Krishnasami Panikondar *v.* Ramasami Chettiar	I. L. R. 41 Mad. 412 ; L. R. 45 I. A. 25	183
Krishnaya *v.* Mallya	I. L. R. 41 Mad. 458.	200
Kumarappa Reddi *v.* Manavala Goundan	I. L. R. 41 Mad. 374	49
Kumaraswami Chetty *v.* Kuppuswami Chetty	I. L. R. 41 Mad. 685	105
Kumud Kanta Chakraborty *v.* King-Emperor	22 C. W. N. 575	261
Kundal Lal *v.* Begam-un-nisa	22 C. W. N. 937	220
Kunhi Moidin *v.* Chamu Nair	I. L. R. 41 Mad. 182.	306
Kunj Behari Lal *v.* The Bhargava Commercial Bank, Jubbulpur.	I. L. R. 40 All. 522	89
Kunja Behary Bardhan *v.* Gosto Behary Bardhan	22 C. W. N. 66	256
Kurugodappa *v.* Soogamma	I. L. R. 41 Mad. 40	52
Kuttichami Moothan *v.* Rama Pattar	I. L. R. 41 Mad. 980	236

L

Lachmi Kunwar *v.* Durga Kunwar	I. L. R. 40 All. 619	157
Lachmi Narain Dube *v.* Kishan Lal	I. L. R. 40 All. 665	251
Ladhabhai Lakhmsi *v.* Sir Jamsetji Jijibhoy	I. L. R. 42 Bom. 103	179
Lakhamsey Ladha & Co. *v.* Lakhmichand Padamsey	I. L. R. 42 Bom. 205	90
Lakhan Singh *v.* Ram Kishan Das	I. L. R. 40 All. 93	95
Lakhichand Chatrabhuj *v.* Lalchand Ganpat	I. L. R. 42 Bom. 352	129
Lakhi Kanta Roy *v.* Raj Chandra Shaha	22 C. W. N. 922	301
Lakshmanan Chetty *v.* P. P. V. Palaniappa Chetty	I. L. R. 41 Mad. 813	64
Lakshmi Narayan Roy *v.* Secretary of State for India	I. L. R. 45 Calc. 866 ; 22 C. W. N. 824	242
Lala Ram *v.* Thakur Prasad	I. L. R. 40 All. 680	46

Name of Case.	Volume and Page.	Column of Digest.
Lalit Mohan Chakravarti *v.* Hemendra Kumar De	I. L. R. 45 Calc. 301	31
Lalta Prasad Chaudhri *v.* Gokul Prasad	I. L. R. 40 All. 617	243
Laxmava *v.* Rachappa	I. L. R. 42 Bom. 626	191
Laxmibai *v.* Radhabai	I. L. R. 42 Bom. 327	94
Legal Remembrancer *v.* Mozam Molla	I. L. R. 45 Calc. 905	281
Lelong Jumia *v.* Rajani Kanta Chowdhury	22 C. W. N. 792	226
Leslie & Co. *v.* N. Giriah Chettiar	22 C. W. N. 282	14
Lingayya *v.* Chinna Narayana	I. L. R. 41 Mad. 169	190
M		
M. & S. M. Ry. Co., Ltd. *v.* Haridoss Banmalidoss	I. L. R. 41 Mad. 871	261
Madana Mohana Deo *v.* Purushotthama Deo	I. L. R. 41 Mad. 855; L. R. 45 I. A. 156	147
Madepalli Venkataswami *v.* Madepalli Suranna	I. L. R. 41 Mad. 1022	67
Madhoram Hurdeo Das *v.* G. C. Sett	I. L. R. 45 Calc. 28	278
Madhusudan Mahton *v.* Midnapore Zemindari Co.	I. L. R. 45 Calc. 940	178
Madhusudan Mallik *v.* Jamiruddin Sheikh	22 C. W. N. 999	21
Mahamed Haji *v.* Kalimabi	I. L. R. 41 Mad. 211	205
Maharaj Bahadur Singh *v.* Inder Chand Bothra	22 C. W. N. 390	136
Mahmadbhai Dosubhai *v.* The Secretary of State for India.	I. L. R. 42 Bom. 126	175
Mahomedali Adamji *v.* Secretary of State for India	I. L. R. 42 Bom. 668	271
Malkarjun Mahadeo *v.* Amrita Tukaram	I. L. R. 42 Bom. 714	196
Man Singh *v.* Musammat Gaini	I. L. R. 40 All. 77	156
Manavikraman Tirumalpad *v.* The Collector of the Nilgiris.	I. L. R. 41 Mad. 943	180
Manhari Chowdhuri *v.* Emperor	I. L. R. 45 Calc. 727; 22 C. W. N. 199	19
Mani Lal Nahar *v.* Mowdad Rahaman	22 C. W. N. 951	223
Mani Lal Sil *v.* Nepal Chandra Pal	22 C. W. N. 547	200
Mani Lall Singh *v.* Trustees for the Improvement of Calcutta.	I. L. R. 45 Calc. 343; 22 C. W. N. 1	263
Manju Mahadev *v.* Shivappa Manju	I. L. R. 42 Bom. 444	89
Manmatha Nath Dey *v.* Gadadhar Mana	I. L. R. 45 Calc. 638	12
Mansukh Ram *v.* Birjraj Saran Singh	I. L. R. 40 All. 646	41
Marshal & Co. *v.* Naginchand Fulchand	I. L. R. 42 Bom. 473	33
Masilamani Mudaliar *v.* Sethuswami Ayyar	I. L. R. 41 Mad. 251	137
Matabadal Singh *v.* Gourish Narain Singh	I. L. R. 40 All. 656	8
Mathura Prasad *v.* Sheobalak Ram	I. L. R. 40 All. 89	67
Maung Kyin *v.* Ma Shwe La	I. L. R. 45 Calc. 320; 22 C. W. N. 257	126
Maung Thwe *v.* Maung Tun Pe	I. L. R. 45 Calc. 1; 22 C. W. N. 97	32
Mayankutti *v.* Kunhammad	I. L. R. 41 Mad. 641	121
Meenakshisundara Mudaliar *v.* Rathnasami Pillai	I. L. R. 41 Mad. 959	285
Mehdi Hossein *v.* Umesh Chandra Mookerjee	I. L. R. 45 Calc. 685	38
Meik, *In the goods of Mrs. E. E. W.*	I. L. R. 40 All. 279	95
Metharam Ramrakhiomal *v.* Rewachand Ramrakhiomal.	I. L. R. 45 Calc. 666; 22 C. W. N. 377; L. R. 45 I. A. 41	154
Metropolitan Engineering Works *v.* Debrunner	I. L. R. 45 Calc. 481; 22 C. W. N. 416	91
Meyer *v.* Manoranjan Bagchi	22 C. W. N. 441	179
Midnapore Zemindari Company *v.* Appayaswami Naicker.	I. L. R. 41 Mad. 749	297
Midnapore Zemindary Company *v.* Dinanath Sahu	22 C. W. N. 766	28

Name of Case.	Volume and Page.	Column of Digest.
Milton *v.* Sherman	22 C. W. N. 1001	239
Mina Kumari Saheba *v.* Ichhamoyee Chaudhrani	22 C. W. N. 929	227
Mir Dad Khan *v.* Ramzan Khan	I. L. R. 40 All. 449	7
Mithan Lal *v.* Chhaju Singh	I. L. R. 40 All. 429	298
Mohendra Nath Bagchi *v.* Gour Chandra Ghosh	22 C. W. N. 860	303
Mohni *v.* Baij Nath	I. L. R. 40 All. 582	254
Monoranjan Mukerjee *v.* Brojo Gopal Goswami	22 C. W. N. 678	122
Moti Chand *v.* Lalta Prasad	I. L. R. 40 All. 256	129
Moti Lal Ghose and Others, *In re*	I. L. R. 45 Calc. 169	77
Motilal Shivlal *v.* The Poona Cotton and Silk Manufacturing Co., Limited.	I. L. R. 42 Bom. 215	73
Muhammad Ali Khan *v.* Raja Ram Singh	I. L. R. 40 All. 610	104
Muhammad Faiyaz Ali Khan *v.* Bihari	I. L. R. 40 All. 56	126
Muhammad Farzand Ali *v.* Rahat Ali	I. L. R. 40 All. 381	66
Muhammad Iltifat Husain *v.* Alim-un-nissa Bibi	I. L. R. 40 All. 551	63
Muhammad Iltifat Husain *v.* Alim-un-nissa Bibi	I. L. R. 40 All. 553	94
Muhammad Isa Khan *v.* Muhammad Khan	I. L. R. 40 All. 60	8
Muhammad Ishaq Khan *v.* Muhammad Rustam Ali Khan.	I. L. R. 40 All. 292	43
Muhammad Niaz Khan *v.* Muhammad Idris Khan	I. L. R. 40 All. 322	206
Munia Goundan *v.* Ramasami Chetty	I. L. R. 41 Mad. 650	194
Municipal Council of Vizagapatam *v.* Foster	I. L. R. 41 Mad. 538	292
Munir-ud-din *v.* Samir-un-nissa Bibi	I. L. R. 40 All. 52	256
Munnavaru Begam Sahibu *v.* Mir Mahapalli Sahib	I. L. R. 41 Mad. 1033	207
Muralidhar Chamaria *v.* M. R. Dalmia	I. L. R. 45 Calc. 818	13
Murray *v.* East Bengal Mahajan Flotilla Co., Ld.	22 C. W. N. 1018	166
Musleha Bibi *v.* Ram Narain Sahu	I. L. R. 40 All. 536	65
Muthammal *v.* Razu Pillai	I. L. R. 41 Mad. 513	215
Muthia Naick *v.* The King-Emperor	I. L. R. 41 Mad. 323	105
Muthiah *v.* Alagappa	I. L. R. 41 Mad. 1	246

N

Nafar Chandra Chandra *v.* Bejoy Chand Mahtap	22 C. W. N. 487	38
Nafar Chandra Pal *v.* Shukur	L. R. 45 I. A. 183	249
Nagendrabala Dassi *v.* Debendra Nath Mahish	22 C. W. N. 491	114
Nagendra Lal Chowdhury *v.* Fani Bhusan Das	I. L. R. 45 Calc. 785	182
Nand Lal Singh *v.* Beni Madho Singh	I. L. R. 40 All. 672	93
Nanda Lal Banerjee *v.* Umesh Chandra Das	I. L. R. 45 Calc. 151 ; 22 C. W. N. 86	277
Nanda Lal Ganguli *v.* Khetra Mohan Ghose	I. L. R. 45 Calc. 585	280
Nandalal Mullick *v.* Panchanan Mukerjee	I. L. R. 45 Calc. 60	275
Nando Lal Neogy *v.* Goralia Municipality	22 C. W. N. 599	122
Narain Das *v.* Het Singh	I. L. R. 40 All. 637	285
Narain Dei *v.* Parmeshwari	I. L. R. 40 All. 81	288
Naraina Rao *v.* Shivu Rao	I. L. R. 41 Mad. 1043	216
Narashimhaya *v.* Veeraraghavulu	I. L. R. 41 Mad. 440	254
Narasingha Bana Goswami *v.* Prolhadman Teoari	22 C. W. N. 994	185, 193, 229
Narayan Balkrishna *v.* Fasku Monu	I. L. R. 42 Bom. 87	231
Narayan Ganesh Ghatate *v.* Baliram	L. R. 45 I. A. 179	37
Narayanan Nair *v.* Cheria Kathiri Kutty	I. L. R. 41 Mad. 721	202
Narendra Nath Mitter *v.* Radha Churn Pal	22 C. W. N. 943	224
Narma *v.* Bombay Municipal Commissioners	L. R. 45 I. A. 125	30
Narottam Morarji *v.* The Indian Specie Bank, Limited, in Liquidation.	I. L. R. 42 Bom. 264	71
Narsagounda *v.* Chawagounda	I. L. R. 42 Bom. 638	192

Name of Case.	Volume and Page.	Column of Digest.
Narsinhbhat *v.* Bando Krishna	I. L. R. 42 Bom. 411	45
Narsingh Das *v.* Debi Prasad	I. L. R. 40 All. 211	135
Narsingh Sahai *v.* Sheo Prasad	I. L. R. 40 All. 1	51
Narsingrao Konher Inamdar *v.* Bando Krishna	I. L. R. 42 Bom. 309	198
Narso Ramaji *v.* Nagava	I. L. R. 42 Bom. 359	261
Natabar Dutt *v.* Bireshur Rakhit	22 C. W. N. 552	100
Naulakhi Kunwar *v.* Jai Kishan Singh	I. L. R. 40 All. 575	150
Nemai Charan De *v.* Secretary of State for India	I. L. R. 45 Calc. 496	257
Net Ram *v.* Bhagirathi Sah	I. L. R. 40 All. 75	251
Niamatannessa Bibi *v.* Hossenuddin Nazir	22 C. W. N. 512	204
Nibaran Chandra Sen *v.* Ram Chandra Sen	22 C. W. N. 444	130
Nilkanth Laxman *v.* Raghu *bin* Mahadu	I. L. R. 42 Bom. 553	199
Nilmoni Choudhury *v.* Durga Charan Choudhury	22 C. W. N. 704	254
Nizam-ud-din Shah *v.* Bohra Bhim Sen	I. L. R. 40 All. 203	63
Nowrang Singh *v.* Janardan Kishor Lal Singh	I. L. R. 45 Calc. 469	121
Nur-ud-din Khan *v.* Pran Kishan Chakravarti	I. L. R. 40 All. 659	65
O		
Official Assignee of Madras, The *v.* Palaniappa Chetty.	I. L. R. 41 Mad. 824	91
Orde *v.* The Secretary of State for India	I. L. R. 40 All. 367	172
P		
Pahalwan Singh *v.* Janki	I. L. R. 41 All. 17	148
Palaniappa Chettiar *v.* Shanmugam Chettiar	I. L. R. 41 Mad. 815	225
Palaniappa Chettiar *v.* Veerappa Chettiar	I. L. R. 41 Mad. 446	188
Panachand Chhotalal *v.* Manoharlal Nandlal	I. L. R. 42 Bom. 136	61, 150
Pandu *v.* Ramchandra Ganesh	I. L. R. 42 Bom. 112	170
Paramasiva Udayan *v.* Krishna Padayachi	I. L. R. 41 Mad. 535	130
Parbati Kunwar *v.* Deputy Commissioner of Kheri	I. L. R. 40 All. 541 ; L. R. 45 I. A. 111	229
Parmananda Das Goswami *v.* Kripasindhu Roy	L. R. 45 I. A. 246	176
Parvathammal *v.* Chokkalinga Chetty	I. L. R. 41 Mad. 241	143
Parvatrao Mhaskojirao, *In re*	I. L. R. 42 Bom. 281	102
Peda Venkanna *v.* Sreenivasa Deekshatulu	I. L. R. 41 Mad. 136	150
Perumal Goundan *v.* Thirumalarayapuram Jananukoola Dhanasekara Sanga Nidhi.	I. L. R. 41 Mad. 624	61
Pichamma *v.* Sreeramulu	I. L. R. 41 Mad. 286	55
Ponnuswami Pillay *v.* Singaram Pillay	I. L. R. 41 Mad. 731	132
Port Canning and Land Improvement Co., Ld. *v.* Noyan Pramanik.	22 C. W. N. 558	22
Powell *v.* Sen	I. L. R. 40 All. 45	74
Prafulla Nath Tagore *v.* Matabaddin Mandal	22 C. W. N. 323	27
Prafulla Nath Tagore *v.* Shital Khan	22 C. W. N. 788	27
Pramatha Bhusan Deb *v.* Ram Charan Mondal	22 C. W. N. 124	295
Pran Krishna Bhandari *v.* Surath Chandra Roy	I. L. R. 45 Calc. 873 ; 22 C. W. N. 515	231
Pran Krishna Pal *v.* Atul Krishna Mukerjee	22 C. W. N. 662	27
Prasada Nayudu *v.* Virayya	I. L. R. 41 Mad. 849	57
Premsuk Das Assaram *v.* Udairam Gungabux	I. L. R. 45 Calc. 138 ; 22 C. W. N. 204	68

Name of Case.	Volume and Page.	Column of Digest.
Protap Chandra Dhar *v.* Peary Mohan Dhar	22 C. W. N. 800	216
Purna Chandra Pal *v.* Baroda Prosanna Bhattacharjya.	22 C. W.N. 637	197
Purshottamdas Harkisondas *v.* The Central India Spinning, Weaving and Manufacturing Company.	I. L. R. 42 Bom. 579	72
Q		
Qasim Ali Khan *v.* Bhagwanta Kunwar	I. L. R. 40 All. 12	46
R		
Radhakant Lal *v.* Nazma Begum	I. L. R. 45 Calc. 733 ; 22 C. W. N. 649	153
Radha Krishna Chanderji *v.* Ram Bahadur	22 C. W. N. 330	142
Radha Nath Kaibarta *v.* King-Emperor	22 C. W. N. 742	247
Radhe Lal *v.* Bhawani Ram	I. L. R. 40 All. 178	161
Radhe Shiam *v.* Behari Lal	I. L. R. 40 All. 558	85
Raghavacharyulu *v.* Govindasari	I. L. R. 41 Mad. 1068	68
Raghavalu Naicker *v.* Singaram	I. L. R. 41 Mad. 727	103
Raghunandan Lal *v.* Badan Singh	I. L. R. 40 All. 209	199
Raghunath Lal *v.* King-Emperor	22 C. W. N. 494	127
Raichand Motichand *v.* Dhondo Laxuman	I. L. R. 42 Bom. 728	115
Raj Kumar Thakur Giridhari Singh *v.* Megh Lal Pandey.	I. L. R. 45 Calc. 87 ; 22 C. W. N. 201	177
Raja of Deo *v.* Abdullah	I. L. R. 45 Calc. 909 ; L. R. 45 I. A. 97	291
Raja of Pachete *v.* Kumud Nath Chatterji	L. R. 45 I. A. 103	39
Raja of Palghat *v.* Raman Unni	I. L. R. 41 Mad. 4	194
Rajabala Dasi *v.* Shyama Charan Banerjee	22 C. W. N. 566	153
Rajachari *v.* Tirumugoor Devastanam	I. L. R. 41 Mad. 724	123
Rajah Venkata Ramayya *v.* Veeraswami	I. L. R. 41 Mad. 554	66
Rajani Kanta Ghose *v.* Secretary of State for India	L. R. 45 I. A. 190	176
Rajani Kanta Mookerjee *v.* Secretary of State for India.	I. L. R. 45 Calc. 645	182
Rajani Nath Das *v.* Ofajuddi Molla	22 C. W. N. 318	265
Rajani Sundari Dassi *v.* Hara Sundari Dassi	22 C. W. N. 693	25
Rajeshwari Dasi *v.* Binoda Sundari Dasi	22 C. W. N. 278	185
Rajindra Bahadur Singh *v.* Raghubans Kunwar	I. L. R. 40 All. 470 ; L. R. 45 I. A. 134	152
Rakhmabai *v.* Mahadeo Narayan	I. L. R. 42 Bom. 155	60
Ram Baran Rai *v.* Har Sewak Dube	I. L. R. 40 All. 387	265
Ram Dulari *v.* Hardwari Lal	I. L. R. 40 All. 605	192
Ram Naresh Ojha *v.* Gouri Shankar Misir	22 C. W. N. 149	281
Ram Nath *v.* Sekhdar Singh	I. L. R. 40 All. 51	41
Ramalinga Reddi *v.* Kotayya	I. L. R. 41 Mad. 26	128
Ramanadhan Chetty *v.* Katha Velan	I. L. R. 41 Mad. 353	250
Ramanamma *v.* Kamaraju	I. L. R. 41 Mad. 23	191
Ramanbhai *v.* Ghashiram	I. L. R. 42 Bom. 595	70
Rama Rao *v.* Rajah of Pittapur	I. L. R. 41 Mad. 778 ; L. R. 45 I. A. 148	154
Rama Shenoi *v.* Hallagna	I. L. R. 41 Mad. 205	44
Ramasami Naidu *v.* Muthusami Pillai	I. L. R. 41 Mad. 923	252

Name of Case.	Volume and Page.	Column of Digest.
Ramaswami Ayyar *v.* The King-Emperor	I. L. R. 41 Mad. 589	234
Ramchandra Gangadhar *v.* Mahadev Moreshvar	I. L. R. 42 Bom. 260	10
Ramendra Nath Roy *v.* Brajendra Nath Das	I. L. R. 45 Calc. 111	212
Ramiah Aiyar *v.* Gopalier	I. L. R. 41 Mad. 1053	63
Ramjash Agarwalla *v.* India General Navigation and Railway Co., Ld.	22 C. W. N. 310	69
Rammol Koch *v.* Hakol Koli Kochini	22 C. W. N. 315	303
Ramrao N. Bellary, *In re*	I. L. R. 42 Bom. 190	101
Ramzan *v.* Ram Daiya	I. L. R. 40 All. 96	162
Rangiah Chetty *v.* Vajravelu Mudaliar	I. L. R. 41 Mad. 370	255
Ranjit Singh *v.* Maharaj Bahadur Singh	L. R. 45 I. A. 162	183
Raoji Bhikaji *v.* Anant Laxman	I. L. R. 42 Bom. 535	158
Rash Mohan Saha *v.* Kristodas Ray	22 C. W. N. 982	220
Ratanlal Choonilal Panalal *v.* Municipal Commissioners for Bombay.	L. R. 45 I. A. 233	30
Ratan Singh *v.* Khem Karan	I. L. R. 40 All. 358	95
Rebati Mohan Das *v.* Nadiabashi De	22 C. W. N. 543	216
Rehmatunnissa Begum *v.* Price	I. L. R. 42 Bom. 380; L. R. 45 I. A. 61; 22 C. W. N. 601	233
Reshu Kaviraj *v.* King-Emperor	22 C. W. N. 163	98
Risal Singh *v.* Balwant Singh	I. L. R. 40 All. 593; L. R. 45 I. A. 168	146
Roop Chand Jankidas *v.* National Bank of India, Ld.	22 C. W. N. 1042	283
Rudra Narain Jana *v.* Naba Kumar Das	22 C. W. N. 657	45
Rukumali *v.* The Emperor	22 C. W. N. 451	127
Runga Row *v.* Rajah of Karvetnagar	I. L. R. 41 Mad. 503	96
Rupa Thakurani *v.* Kumudnath Karmakar	22 C. W. N. 594	186

S

Sachi Prosad Mukerjee *v.* Amar Nath Roy	22 C. W. N. 851	56
Sahed Buksh *v.* Golam Nabi Khandkar	22 C. W. N. 996	206
Sailabala Debi *v.* Nrittya Gopal Sen	22 C. W. N. 143	59
Sainuddin *v.* Latifennessa Bibi	22 C. W. N. 924	204
Sajjadi Begam *v.* Dilawar Husain	I. L. R. 40 All. 579	114
Sakhiuddin Saha *v.* Sonaullah Sarkar	22 C. W. N. 641	219
Sakina Bai *v.* Kaniz Fatima Begam	22 C. W. N. 577	47
Salamat-uz-Zamin Begam *v.* Masha Allah Khan	I. L. R. 40 All. 187	294
Sankaran Nambudripad *v.* Ramaswami Ayyar	I. L. R. 41 Mad. 691	172
Sannamma *v.* Radhabhayi	I. L. R. 41 Mad. 418	45
Santoke Chand *v.* Sugan Chand Munawat	22 C. W. N. 910	102
Saradindu Mukerjee *v.* Charu Chandra Dutt	22 C. W. N. 372	92
Saraj Ranjan Choudhury *v.* Premchand Choudhry	22 C. W. N. 263	167, 185
Saraju Bala Dasi *v.* Jogemaya Dasi	I. L. R. 45 Calc. 634; 22 C. W. N. 115	94
Sasi Kanta Acharjee *v.* Kunja Mohan Moitra	22 C. W. N. 63	167
Satish Chandra Sarkar *v.* Brojogopal Dutta	22 C. W. N. 807	20
Satish Ranjan Das *v.* Mercantile Bank of India, Ld.	I. L. R. 45 Calc. 702	217
Satya Kumar Mukherjee *v.* Benares Bank, Ld.	22 C. W. N. 700	252
Satya Sankar Ghoshal *v.* Monomohan Guha	22 C. W. N. 131	260
Saudagar Singh *v.* Pardip Narayan Singh	I. L. R. 45 Calc. 510; 22 C. W. N. 436; L. R. 45 I. A. 21.	113
Secretary of State for India *v.* Bijoy Chand Mahatap	22 C. W. N. 872	225, 266
Secretary of State for India *v.* Gangadhar Nanda	I. L. R. 45 Calc. 934	289
Secretary of State for India *v.* Shib Narain Hazra	22 C. W. N. 802	26, 190
Seehase, *Re*	22 C. W. N. 335	246

Name of Case.	Volume and Page.	Column of Digest.
Serafat Ali *v.* Issan Ali	I. L. R. 45 Calc. 691 ; 22 C. W. N. 347	92
Sessions Judge of Coimbatore *v.* Murappa Goundan	I. L. R. 41 Mad. 982	107
Sethurama Ayyangar *v.* Suppiah Pillai	I. L. R. 41 Mad. 121	123
Sethuramaswamiar *v.* Meruswamiar	I. L. R. 41 Mad. 296 ; 22 C. W. N. 457 ; L. R. 45 I. A. 1.	151
Sham Lal Das *v.* Secretary of State for India	22 C. W. N. 538	35
Shamsher Singh *v.* Piari Dat	I. L. R. 40 All. 690	244
Shankar Lal *v.* Ram Babu	I. L. R. 40 All. 446	232
Sharfuddin Hossain *v.* Radha Charan Das	L. R. 45 I. A. 205	272
Sheo Prasad Singh *v.* Premna Kunwar	I. L. R. 40 All. 122	49
Shib Chandra Banerjee *v.* Surendra Chandra Mandal	I. L. R. 45 Calc. 515 ; 22 C. W. N. 997	38
Shib Chundra Ray Choudhury *v.* Harendra Lal Ray Choudhury.	22 C. W. N. 721	270
Shibnarain Mookerjee *v.* Bhutnath Guchait	I. L. R. 45 Calc. 475 ; 22 C. W. N. 422	110
Shidaya Virbhadraya *v.* Satappa Bharmappa	I. L. R. 42 Bom. 367	115
Shriniwas Appacharya *v.* Jagadevappa	I. L. R. 42 Bom. 621	47
Shyamadas Roy Chowdhury *v.* Radhika Prosad Chattaraj.	22 C. W. N. 846	162
Shyampeary Dasya *v.* Eastern Mortgage and Agency Co., Ld.	22 C. W. N. 226	11, 88, 160, 258
Singa Pillay *v.* Govinda Reddy	I. L. R. 41 Mad. 435	219
Sitaramaswami *v.* Lakshmi Narasimha	I. L. R. 41 Mad. 510	53
Sitikanta Roy *v.* Bipra Das Charan	22 C. W. N. 763	141
Sivanarasa Reddi *v.* Doraisami Reddi	I. L. R. 41 Mad. 861	295
Sivanupandia Thevar *v.* Zamindar of Urkad	I. L. R. 45 Mad. 109	124
Solomon *v.* Jyotsna Ghosal	I. L. R. 45 Calc. 492 ; 22 C. W. N. 147	133
Solomon Jacob *v.* The National Bank of India, Ltd., Aden.	I. L. R. 42 Bom. 16	279
Somashastri *v.* Swamirao Kashinath	I. L. R. 42 Bom. 93	85
Sonoo Narayan *v.* Dinkar Jagannath	I. L. R. 42 Bom. 80	245
Sourendra Mohan Sinha *v.* Rajendra Nath Roy	22 C. W. N. 660	299
Srilal Chamaria *v.* King-Emperor	22 C. W. N. 1045	234
Srinivasa *v.* Sesha	I. L. R. 41 Mad. 197	83
Srinivasa Upadya *v.* Ranganna Bhatta	I. L. R. 41 Mad. 622	120
Sripat Narain Rai *v.* Tirbeni Misra	I. L. R. 40 All. 423	56
Sripat Singh *v.* Basant Singh	22 C. W. N. 985	228
Sripati Lall Dutt *v.* Sarat Chandra Mondal	22 C. W. N. 790	214
Stamp Reference by the Board of Revenue	I. L. R. 40 All. 128	287
Subbamma *v.* Chennayya	I. L. R. 41 Mad. 467	52
Subbamma *v.* Narayya	I. L. R. 41 Mad. 259	294
Subbi *v.* Ramkrishnabhatta	I. L. R. 42 Bom. 69	155
Subramania Ayyar *v.* Muthia Chettiar	I. L. R. 41 Mad. 612	140
Subramania Ayyar *v.* Rathnavelu Chetty	I. L. R. 41 Mad. 44	153
Subramanian Chettiar *v.* Raja of Ramnad	I. L. R. 41 Mad. 327	64
Subraya Venkappa *v.* Subraya	I. L. R. 42 Bom. 304	166
Sudhir Chandra Das *v.* Gobinda Chandra Roy	I. L. R. 45 Calc. 538	138
Sudhir Chandra Sett *v.* Syed Abdulla-ul-Musavi	22 C. W. N. 894	125
Sujaddi Mondal *v.* F. L. Cork	22 C. W. N. 499	99
Sujal Biswas *v.* Samiruddin Mandal	22 C. W. N. 599	235
Sukh Lal *v.* Nannu Prasad	I. L. R. 40 All. 666	256
Sukhu Kalwar *v.* King-Emperor	22 C. W. N. 936	35
Sundar Kunwar *v.* Ram Ghulam	I. L. R. 40 All. 626	244
Sundar Nath *v.* Barana Nath	I. L. R. 40 All. 364	100
Sundaram Ayyangar *v.* Ramaswami Ayyangar	I. L. R. 41 Mad. 955	272

Name of Case.	Volume and Page.	Column of Digest.
Sundaram Ayyar *v.* The King-Emperor	I. L. R. 41 Mad. 533	109
Suraj Bhan *v.* Hashmi Begam	I. L. R. 40 All. 555	87
Suraj Narain *v.* Ratan Lal	I. L. R. 40 All. 159	156
Surendra Chandra Ghose, *In re*	I. L. R. 45 Calc. 950	222
Surendra Nath Ghose *v.* Kali Gopal Mazumdar	I. L. R. 45 Calc. 920 ; 22 C. W. N. 367	133
Surendra Nath Goswami *v.* Bansi Badan Goswami	22 C. W. N. 160	18
Suryanarayana *v.* Patanna	I. L. R. 41 Mad. 1012 ; L. R. 45 I. A. 209	123
Suryanarayana *v.* Ramadoss	I. L. R. 41 Mad. 604	147
Suryanarayana *v.* Subbayya	I. L. R. 41 Mad. 471	83
Sushilabala Dassi *v.* Anukul Chandra Choudhury	22 C. W. N. 713	248
Swaminatha Ayyar *v.* Govindaswami Padayachi	I. L. R. 41 Mad. 733	203
Syedunnessa Khatun *v.* Amiruddi	I. L. R. 45 Calc. 294	277

T

Taher Khan *v.* Emperor	I. L. R. 45 Calc. 641 ; 22 C. W. N. 695	1
Tamij Munshi *v.* Brojendra Kishore Roy Chowdhury	22 C. W. N. 967	26
Tamijuddin Sarkar *v.* Sheikh Tazu	22 C. W.N. 822	128
Tamiz-un-nissa Bibi *v.* Najju Khan	I. L. R. 40 All. 668	198
Tarini Charan Sarkar *v.* Bishen Chand	22 C. W. N. 505	273
Thangathammal *v.* Arunachalam Chettiar	I. L. R. 41 Mad. 1071	161
Thema *v.* Kunhi Pathumma	I. L. R. 41 Mad. 118	112
Thenal Ammal *v.* Sokkammal	I. L. R. 41 Mad. 233	61
Thiraviyam Pillai *v.* Lakshmana Pillai	I. L. R. 41 Mad. 616	58
Thodaphuza Rubber Company *v.* The Registrar of Joint Stock Companies, Madras.	I. L. R. 41 Mad. 307	70
Tholasingham Chetty *v.* Vedachella Aiyah	I. L. R. 41 Mad. 319	187
Tilak Ram *v.* Dalip Singh	I. L. R. 40 All. 338	101

U

Udoy Narain Jana *v.* Secretary of State for India	22 C. W. N. 823	242
Umesh Chandra Dutta *v.* Joy Nath Das	22 C. W. N. 474	227
Umesh Chunder Roy *v.* Satish Chundra Roy	22 C. W. N. 69	100, 108
Upendra Lal Gupta *v.* Jogesh Chandra Ray	22 C. W. N. 275	179
Upendra Narain Roy *v.* Janaki Nath Roy	I. L. R. 45 Calc. 305 ; 22 C. W. N. 611	10
Upendra Nath Ghosh *v.* Dwarkanath Biswas	22 C. W. N. 322	24
Upendra Nath Ghosh *v.* Gopi Charan Saha	22 C. W. N. 321	24

V

Vaidyanatha Sastri *v.* Savithri Ammal	I. L. R. 41 Mad. 75	148
Vaiguntathammal *v.* Valliamman	I. L. R. 41 Mad. 256	54
Vanamati Sattiraju *v.* Bollapragada Pallamraju	I. L. R. 41 Mad. 939	232
Varamma *v.* Gopaladasayya	I. L. R. 41 Mad. 659	194
Vasudevan Moosad *v.* Ittirarichan Nair	I. L. R. 41 Mad. 582	244

Name of Case.	Volume and Page.	Column of Digest.
Veerabasavaraju *v.* Balasurya Prasada Rao	I. L. R. 41 Mad. 998 ; L. R. 45 I. A. 265	146
Veeranna *v.* Veerabhadraswami	I. L. R. 41 Mad. 427	189
Venkanna *v.* Venkatakrishnayya	I. L. R. 41 Mad. 18	192
Venkatachalapati Rao *v.* Kameswaramma	I. L. R. 41 Mad. 151	64
Venkatachellamayya *v.* Nilakanta Girjee	I. L. R. 41 Mad. 474	58
Venkata Lakshminarasamma *v.* The Secretary of State for India	I. L. R. 41 Mad. 840	143
Venkata Nagabushanam *v.* Mahalakshmi	I. L. R. 41 Mad. 325	6
Venkata Narayana Pillai *v.* Ponnuswami Nadar	I. L. R. 41 Mad. 357	267
Venkataratnam *v.* Ranganayakamma	I. L. R. 41 Mad. 985	57
Venkatesh Appashet *v.* Abdul Kadir	I. L. R. 42 Bom. 438	286
Vishnu Narayan *v.* The District Deputy Collector, Kolaba	I. L. R. 42 Bom. 100	11
Vishwanath Ganesh *v.* Kondaji	I. L. R. 42 Bom. 49	176
Vithal Dhonddev *v.* The Alibag Municipality	I. L. R. 42 Bom. 629	118
Vithoba Madhav *v.* Madhav Damodar	I. L. R. 42 Bom. 344	81
Vitta Tayaramma *v.* Chatakondu Sivayya	I. L. R. 41 Mad. 1078	149
Vullappa *v.* Bheema Rao	I. L. R. 41 Mad. 156	240
W		
Wazir Ali *v.* Ali Islam	I. L. R. 40 All. 683	196
Z		
Zipru *v.* Hari Supdushet	I. L. R. 42 Bom. 10	59

ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1918.

A

ABANDONMENT OF HOLDING.

——————— *Tenant transferring entire holding but retaining homestead but not paying rent—Stranger in possession of land leased—Possession if and when adverse to landlord.* Though there is no inflxible rule of law that a Court is not competent to determine that the rights of the parties litigants are really different from what is alleged either by the plaintiff or by the defendant, it is absolutely necessary that the determination in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. Where, notwithstanding the sale of the entire land of an agricultural tenancy, the tenant remains in occupation of the homestead portion covering about one-tenth of the whole area without, however, making any arrangement for payment of rent to the landlord: *Held,* that the tenant must be taken to have abandoned the land. Time does not begin to run against the landlord in favour of a stranger in occupation of the leased land until the tenancy has terminated. Where the tenant was not shown to have discontinued paying rent until well within the period of limitation: *Held,* that a suit for recovery against a stranger in possession was not time-barred. ISHAN CHANDRA DHUPI *v.* NISHI CHANDRA DHUPI (1917) . . **22 C. W. N. 853**

ABATEMENT OF SUIT.

See LIMITATION . **I. L. R. 45 Calc. 94**

See PARTIES . **I. L. R. 45 Calc. 862**

ABDUCTION.

——————— *Abduction of married woman with intent to compel her to marry another—"Marry," meaning of—Penal Code (Act XLV of 1860), s. 366—Valid Marriage.* S. 366 of the Penal Code applies to the case of abduction of a married woman with intent to compel her to marry. The word "marry" therein implies, as in s. 494, going through a form of marriage, whether the same is in fact valid or not. TAHER KHAN AND OTHERS *v.* EMPEROR (1917) . . **I. L. R. 45 Calc. 641**

ABETMENT OF AN ABETMENT.

See PENAL CODE, s. 108.

22 C. W. N. 1045

ABWAB.

See ILLEGAL CESS

I. L. R. 45 Calc. 59

See PESHKOSH . **I. L. R. 45 Calc. 866**

ACCESSORY EASEMENT.

See EASEMENTS ACT (V OF 1882), S. 24.

I. L. R. 42 Bom. 529

ACCOUNT.

——————— **suit for—**

See COURT-FEE . **I. L. R. 45 Calc. 634**

See PARTNERSHIP **I. L. R. 40 All. 446**

See PRINCIPAL AND AGENT.

I. L. R. 41 Mad. 1

ACCOUNT BOOKS.

——————— **entries in, as evidence—**

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 45 Calc. 878

ACCUSED.

See WITNESS . **I. L. R. 45 Calc. 720**

ACT.

——————— **1856—XV.**

See HINDU WIDOWS' RE-MARRIAGE ACT.

——————— **1859—XI.**

See REVENUE SALE LAW.

——————— **1859—XIII.**

See WORKMAN'S BREACH OF CONTRACT ACT.

——————— **1860—XLV.**

See PENAL CODE.

——————— **1863—XX.**

See RELIGIOUS ENDOWMENTS ACTS.

——————— **1865—III.**

See COMMON CARRIERS ACT.

——————— **1867—III.**

See PUBLIC GAMBLING ACT.

——————— **1868—XIX.**

See OUDH RENT ACT

——————— **1869—IV.**

See DIVORCE ACT.

ACT—*contd.*

———— **1870—VII.**

See COURT-FEES ACT.

———— **1871—XXIII.**

See PENSIONS ACT.

———— **1872—I.**

See EVIDENCE ACT.

———— **1872—IX.**

See CONTRACT ACT.

———— **1872—XV.**

See CHRISTIAN MARRIAGE ACT.

———— **1873—X.**

See OATHS ACT.

———— **1874—XIV.**

See SCHEDULED DISTRICTS ACT.

———— **1875—IX.**

See MAJORITY ACT.

———— **1877—I.**

See SPECIFIC RELIEF ACT.

———— **1877—XV.**

See LIMITATION ACT, 1877.

———— **1878—I.**

See OPIUM ACT.

———— **1878—VII.**

See FOREST ACT.

———— **1878—XI.**

See ARMS ACT.

———— **1879—XVIII.**

See LEGAL PRACTITIONERS ACT.

———— **1881—V.**

See PROBATE AND ADMINISTRATION ACT.

———— **1881—XXVI.**

See NEGOTIABLE INSTRUMENTS ACT.

———— **1882—II.**

See TRUSTS ACT.

———— **1882—IV.**

See TRANSFER OF PROPERTY ACT.

———— **1882—V.**

See EASEMENTS ACT.

———— **1882—VI.**

See INDIAN COMPANIES ACT.

———— **1882—XIV.**

See CIVIL PROCEDURE CODE, 1882.

———— **1882—XV.**

See PRESIDENCY SMALL CAUSE COURTS ACT.

———— **1883—XIX.**

See LAND IMPROVEMENTS LOANS ACT.

———— **1885—VIII.**

See BENGAL TENANCY ACT.

———— **1887—IX.**

See PROVINCIAL SMALL CAUSE COURTS ACT.

———— **1887—XII.**

See CIVIL COURT ACT.

ACT—*concld.*

———— **1889—II.**

See PRIVATE FISHERIES ACT.

———— **1889—VII.**

See SUCCESSION CERTIFICATE ACT.

———— **1890—IX.**

See RAILWAYS ACT.

———— **1893—IV.**

See PARTITION ACT.

———— **1893—X.**

See OATHS ACT.

———— **1894—I.**

See LAND ACQUISITION ACT.

———— **1895—XV.**

See CROWN GRANTS ACT.

———— **1897—X.**

See GENERAL CLAUSES ACT.

———— **1898—V.**

See CRIMINAL PROCEDURE CODE.

———— **1899—II.**

See STAMP ACT.

———— **1899—IX.**

See ARBITRATION ACT.

———— **1904—VII.**

See ANCIENT MONUMENTS PRESERVATION ACT.

———— **1907—III.**

See PROVINCIAL INSOLVENCY ACT.

———— **1908—V.**

See CIVIL PROCEDURE CODE.

———— **1908—IX.**

See LIMITATION ACT.

———— **1908—XVI.**

See REGISTRATION ACT.

———— **1909—III.**

See PRESIDENCY TOWNS INSOLVENCY ACT.

———— **1911—II.**

See PATENTS AND DESIGNS ACT.

———— **1912—II.**

See CO-OPERATIVE SOCIETIES ACT.

———— **1912—IV.**

See LUNACY ACT.

———— **1913—VII.**

See COMPANIES ACT.

———— **1914—VIII.**

See MOTOR VEHICLES ACT.

ADEN ACT (II OF 1864).

———— **s. 8—**

See ASSESSMENT **I. L. R. 42 Bom. 692**

ADJOURNMENT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 344.

I. L. R. 42 Bom. 254

ADMINISTRATION.

——————— *Crown debt, priority of —Still-head duty—English mortgage of immoveables —Fixtures—Hypothecation of moveables and shares.* The owner of a distillery died, leaving a certain debt due to Government as still-head duty in respect thereof, as also two mortgages (in the English form) on the land and premises together with the buildings and structures thereon constituting the distillery, the first mortgage being in favour of the Alliance Bank of Simla, Ld., and the second in favour of the Delhi and London Bank, Ld. The moveables appertaining to the distillery were similarly hypothecated to the said Banks and certain shares registered in the deceased's name were hypothecated to and deposited with the Alliance Bank. *Held*, that so far as the immoveable properties were concerned including the fixtures, the Crown was not entitled to priority, that the Alliance Bank as first mortgagee ranked first, but the Delhi and London Bank as second mortgagee was not entitled to priority over the Crown. *Dost Muhammad Khan* v. *Maniram, I. L. R. 29 All. 537, Rama Chandra* v. *Pitchai Kanni, I. L. R. 7 Mad. 434, Ibrahim Khan Sahib* v. *Rangasami Naicken, I. L. R. 28 Mad. 420*, followed. *Mersey Steel and Iron Co.* v. *Naylor Benzon & Co., L. R. 9 Q. B. D. 648; L. R. 9 A. C. 434, The Secretary of State for India* v. *Bombay Landing and Shipping Co., 5 Bom. H. C. R. (O. C.) 23, Giles* v. *Grover, 9 Bing. 128, The King* v. *Cotton, (1751) Parker 112, Ganpatputaya* v. *The Collector of Kanara, I. L. R. 1 Bom. 7, Puthia Valapil Barga* v. *Veloth Assenar, I. L. R. 25 Mad. 733, Gayanada Bala Dassee* v. *Butto Kristo Bairagi, I. L. R. 33 Calc. 1040. The Collector of Moradabad* v. *Muhammad Daim, I. L. R. 2 All. 196*, referred to. *Re Henley & Co., L. R. 9 Ch. D. 469, New South Wales Taxation Commissioners* v. *Palmer, [1907] A. C. 179, Rex* v. *Wells, 16 East 278*, distinguished. So far as the moveable properties and the shares were concerned, the Alliance Bank did not have priority over the Crown. *Harrol* v. *Plenty, [1901] 2 Ch. 314*, followed. BANK OF UPPER INDIA *v.* THE ADMINISTRATOR-GENERAL OF BENGAL (1917).
I. L. R. 45 Calc. 653

ADMINISTRATION SUIT.

See COURT-FEE . **I. L. R. 45 Calc. 634**

ADMIRALTY OFFENCES (COLONIAL) ACT (12 & 13 VIC. C. 96).

See HIGH SEAS . **I. L. R. 42 Bom. 234**

ADMISSIBILITY.

See DEPOSITION . **I. L. R. 45 Calc. 825**

ADMISSION.

See EVIDENCE ACT (I OF 1872), S. 58.
I. L. R. 42 Bom. 352

See PARTIES . **I. L. R. 45 Calc. 159**

ADOPTION.

See BURMESE BUDDIST LAW.
I. L. R. 45 Calc. 1

See HINDU LAW—ADOPTION.
I. L. R. 42 Bom. 547
I. L. R. 40 All. 593

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6(*a*) . **I. L. R. 40 All. 692**

ADOPTION—*concld.*

——————— **by widow—**

See HINDU LAW—ALIENATION.
I. L. R. 41 Mad. 75

——————— **Dvyamushayana form—**

See HINDU LAW—ADOPTION.
I. L. R. 42 Bom. 277

ADULTERATED GHEE.

See CALCUTTA MUNICIPAL ACT (BENG III OF 1899), S. 495A.
22 C. W. N. 745

ADULTERATION.

See UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912), SS. 4, 6 . . **I. L. R. 40 All. 661**

ADVERSE POSSESSION.

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 756

See LIMITATION ACT (IX OF 1908), S. 28; SCH. I, ART. 144.
I. L. R. 40 All. 461

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 120, 144.
I. L. R. 42 Bom. 333

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 141, 144.
I. L. R. 42 Bom. 714

——————— **against a Hindu widow—**

See HINDU LAW—JOINT FAMILY.
I. L. R. 42 Bom. 69

AFFREIGHTMENT.

——————— **contract of—**

See SALE OF GOODS.
I. L. R. 45 Calc. 28

AGENCY.

——————— **termination of—**

See PRINCIPAL AND AGENT.
I. L. R. 41 Mad. 1.

AGENCY RULES OF GODAVARI DISTRICT.

——————— **rr. 8 and 16—**

——————— *Dismissal of suit, for default, by Assistant Agent—Order of Agent restoring suit—Revision petition to High Court, maintainability of—Decree under rule 8, construction of—Order setting aside dismissal without notice to defendant, validity of—Petition to Government, necessity for.* An order, passed by a Government Agent, directing that a suit dismissed by an Assistant Agent for default of appearance of the plaintiff be restored to file, is not a decree within the meaning of rule 8 of the Agency Rules for the Godavari district, and is not revisable by the High Court by a petition filed directly in the High Court. *Sri Pedda Vikrama Deo Garu* v. *The Maharaja of Jeypore, (1916) 4 L. W. 499*, followed. VENKATA NAGABUSHANAM v. MAHALAKSHMI (1917).
I. L. R. 41 Mad. 325

AGENT.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 26, 27, 28.
I. L. R. 41 Mad. 815

See PRINCIPAL AND AGENT.
I. L. R. 41 Mad. 1

AGENT AND PRINCIPAL.

See COMPANY **I. L. R. 42 Bom. 159**

AGRA TENANCY ACT (II OF 1901).

———— **ss. 10, 20**—*Attempt to evade the provisions of the law as to the alienation of* sir *land—Mortgage and relinquish ment of ex-proprietary rights executed by two separate documents of even date.* Certain zamindars, appurtenant to whose proprietary share was a considerable area of *sir* land, executed on the same day in favour of creditors to whom they were indebted to the extent of Rs. 9,000, two documents. By one of these the proprietors covenanted to mortgage with possession 30 bighas of land forming part of their *sir* lands. They recited that they had put the mortgagee in actual possession of the land in question, surrendering all their rights in the *sir* and *khudkasht*. They further covenanted that if the mortgagees should fail to obtain possession, or if the mortgagors should after all not give up the *sir* land from their own cultivation, or should set up any claim to hold it as ex-proprietary tenants, then the mortgagees should be entitled to sue for their mortgage money with heavy interest and to enforce the same by sale of the proprietary rights of the mortgagors, not merely in the 30 bighas of *sir* land, but in a total area of 63 bighas and odd belonging to the mortgagors. The consideration of this document was stated at a sum of Rs. 8,000. A further attempt was made to safeguard the mortgagees by the insertion of a covenant that they should, further, be entitled at any time to sue for the principal of their mortgage debt and to bring to sale the proprietary rights of the mortgagors in this area of 30 bighas which was formally hypothecated as security for the debt. The other document was a deed of relinquishment, by which the mortgagors under the former deed purported to surrender or to relinquish in favour of the mortgagees in return for a consideration of Rs. 1,000, their rights as ex-proprietary tenants in the 30 bighas of *sir* land in question. *Held*, that the whole transaction was but a single one effected under cover of two deeds, and was nothing more than an attempt to evade by an ingenious device the provisions of sections 10 and 20 of the Agra Tenancy Act, 1901. *Moti Chand* v. *Ikram-ullah Khan, I. L. R. 39 All. 173*, and *Dipan Rai* v. *Ram Khelawan, I. L. R. 32 All. 383*, followed. *Lekhraj* v. *Parshadi, 6 A. L. J. 713*, discussed. MIR DAD KHAN *v.* RAMZAN KHAN (1918).
I. L. R. 40 All. 449

———— **s. 20**—*Occupancy tenancy acquired by a member of a joint Hindu family—Profits thrown into common stock—Member of joint family other than the tenant allowed to cultivate.* A special Statute like the Agra Tenancy Act can and does modify the operation of the ordinary Hindu Law in certain matters. Where a zamindar admitted as an occupancy tenant a person who was a member of a Joint Hindu family, it was *held* that such tenant did not, by throwing the profits derived from this land into the common stock of the joint family, cause the tenancy to become part of the joint family property, nor did he, by allowing another member of the joint family to cultivate specific plots forming parts of the holding, effect any hing more than the creation of a subtenancy in favour of such member. KALLU *v.* SITAL (1918).
I. L. R. 40 All. 314

AGRA TENANCY ACT (II OF 1901)—*contd.*

———— **s. 34**—*Person occupying land without consent of landlord—Ejectment—Non-occupancy tenant—Usufructuary mortgagee entitled to possession.* The plaintiffs were the usufructuary mortgagees entitled to possession of the mortgaged property. The defendant having acquired a part of the equity of redemption asserted a right to the possession of some of the *sir* lands comprised in the mortgage without tendering the mortgage money, and somehow managed to get into possession of certain plots. *Held*, that s. 34 of the Agra Tenancy Act, 1901, applied, and the defendant could be regarded as a person in possession of a lrnd without the consent of the land lord and ejected as if he were non-occupancy tenant. *Balli* v. *Nanbat Singh, 9 A. L. J. 771*, followed. JAGARDEO SINGH *v.* ALI HAMMAD (1918)
I. L. R. 40 All. 300

———— **ss. 57, 65, 167**—

See CIVIL AND REVENUE COURTS.
I. L. R. 40 All. 646

———— **s. 95**—

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 5; s. 7, xi.
I. L. R. 40 All. 358

———— **ss. 95, 177** (*f*)—*Civil and Revenue Courts—Jurisdiction—Appeal.* A party to a suit in a Revenue Court cannot, merely by formally raising an absolutely untenable plea of jurisdiction, remove the case from the Revenue Court to a Civil Court. DEO NARAIN SINGH *v.* SITLA BAKHSH SINGH (1916). . . . **I. L. R. 40 All. 177**

———— **s. 150**—*Resumption of muafi—"Proprietor"—Perpetual lessee entitled to resume.* In substitution for a monthly cash payment which the Maharaja of Benares used to make to the lessees, the Maharaja granted to them a perpetual lease of a certain *muafi* village. He transferred to the lessees all rights of every kind, reserving only to himself an annual sum payable as rent with a right to re-enter in case of default of payment. *Held*, that in the circumstances the lessees must be regarded as "proprietors" within the meaning of s. 150 of the Agra Tenancy Act, 1901, and were entitled to sue for resumption of the *muafi*. MATABADAL SINGH *v.* GOURISH NARAIN SINGH (1918).
I. L. R. 40 All. 656

———— **ss. 154, 158**—*Muafi land—Suit for resumption—Portion of muafi grant converted into a grove, but restored to the position of agricultural land before suit.* Where a certain area had been held rent-free for fifty years and by two successors to the original grantee, but part of the area had at one time been occupied by a grove, which, however, had ceased to exist some fifteen years before suit, it was *held*, on suit for resumption, that there was no justification for drawing a distinction between that part of the area which had at one time been a grove, and the rest, which had all along been culturable land, and that, as s. 154 of the Agra Tenancy Act, 1901, did not apply, no portion of the area could be resumed. MUHAMMAD ISA KHAN *v.* MUHAMMAD KHAN (1917) . **I. L. R. 40 All. 60**

———— **ss. 164, 166**—*Lambardar and co-sharer—Suit for profits against lambardar—Death of defendant pending suit—Liability of representative for sums not collected owing to negligence of lambardar.* *Held*, on a construction of ss. 164 and 166 of the Agra Tenancy Act, 1901, that where, a suit for

AGRA TENANCY ACT (II OF 1891)—*concld.*

——— **s. 164**—*concld.*

profits having been filed against a lambardar, the lambardar dies pending the suit, and his legal representative is brought on the record as defendant, the representative is, so far as the assets of the deceased lambardar in his hands are concerned liable to the same extent as the lambardar, that is to say, not only for money actually collected by the lambardar, but also for money left uncollected owing to his negligence or misconduct. *Muzad-un-nissa* v. *Ghulam Sajjad, I. L. R. 20 All. 73,* and *Dip Singh* v. *Ram Charan, I. L. R. 29 All. 15,* distinguished. BHARAT SINGH *v.* TEJ SINGH (1917)
I. L. R. 40 All. 246

——— **ss. 175, 177, 193**— *Order passed by a Revenue Court staying or refusing to stay a suit—Appeal. Held,* that no appeal will lie to the High Court, from the order of a Court of Revenue staying, or refusing to stay, a suit pending before it. *Quœre :* whether any appeal lies at all. KIRPA DEVI *v.* RAM CHANDRA SARUP (1917).
I. L. R. 40 All. 219

——— **s. 193**—*Order of remand—Appeal—. Preliminary and final decrees.* A suit was brought in a Court of Revenue for a declaration that the plaintiff was the proprietor of certain *muafi* land. The Court of first instance dismissed the suit. The lower Appellate Court set aside that decree and allowed the appeal to the extent that it held the plaintiff entitled to be declared a rent-free grantee of so much of the land as was entered in his name. It then added that "the suit be remanded to the lower Court for determination of the revenue payable by the plaintiff appellant." *Held,* that the order being one of remand no second appeal lay to the High Court; and as there was no provision in the Tenancy Act about preliminary or final decrees, the order could not be appealed against as a preliminary decree. ANANDGIR *v.* SRI NIWAS (1918) . . . . **I. L. R. 40 All. 652**

AGREEMENT.

See STAMP ACT (II OF 1899), s. 62; SCH. I, ART. 5 . . **I. L. R. 40 All. 19**

AGRICULTURAL LAND.

See LAND REVENUE CODE (BOM. ACT. V OF 1879), s. 48 **I. L. R. 42 Bom. 126**

ALIENATION.

See FRAUDULENT ALIENATION.

See HINDU LAW—REVERSIONER.
I. L. R. 45 Calc. 590

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 141, 144.
I. L. R. 42 Bom. 714

——— **by head of mutt—**

See MUTT . **I. L. R. 41 Mad. 124**

——— **by Hindu widow—**

See LIMITATION ACT (IX OF 1908) SCH. I, ART. 125 . **I. L. R 41 Mad. 659**

——— **by widow—**

See HINDU LAW—ALIENATION.
I. L. R. 41 Mad. 75

——— **by widow, without necessity—**

See HINDU WIDOW.
I. L. R. 42 Bom. 719

ALTERNATIVE CHARGE.

See AUTREFOIS ACQUIT.
I. L. R. 45 Calc. 727

AMENDED LETTERS PATENT.

——— CL. 15—*Appeal filed beyond time—Application for excuse of delay—Delay not excused by a single Judge—Appeal from the order—Order amounts to judgment under cl. 15.* Where an appeal has been presented beyond the time allowed by law, and application to excuse the delay refused by a single Judge of the High Court, the order of refusal amounts to a judgment within the meaning of cl. 15 of the Amended Letters Patent, and can be appealed from under that clause. RAMCHANDRA GANGADHAR *v.* MAHADEV MORESHWAR (1917).
I. L. R. 42 Bom. 260

AMENDMENT OF DECREE.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 181, 182.
I. L. R. 42 Bom. 309

AMENDMENT OF PLAINT.

——— *Practice and procedure—Suit on a mortgage—Omission to include claims on previous mortgage and charge—Inadvertence, and bonâ fide and erroneous impression as to jurisdiction—Right of appeal—Civil Procedure Code (Act V of 1908), O. II, r. 2.* Where the Court on an application for amendment of plaint granted it without deciding the points urged but subject to any contention which the defendants might raise in answer to the claim as amended: *Held,* that it was better and more regular that the question of the right to amend the plaint should have been determined before the order was made, or if this would have involved a lengthy inquiry covering the same ground as the evidence in the suit, that the hearing of the application to amend should have been adjourned to the hearing of the suit and determined on the evidence then taken. The Court being desirous of getting at the true facts will allow an amendment subject to the three chief conditions: that there is good faith on the part of the applicant; possibility of amendment without such prejudice to the other party as cannot be compensated by costs; and, lastly, that the amendment is not such as to turn a suit of one character into a suit of another character. O. II, r. 2 of the Civil Procedure Code refers to a case where there has been a suit in which there has been an omission to sue in respect of portion of a claim and a decree has been made in that suit. In that case a second suit in respect of the portion so omitted is barred. In a case, where the suit has not been heard but a claim has been omitted by inadvertence, an amend ment may be allowed. *Quœre :* Whether there was an appeal or not from an order of amendment in this case. UPENDRA NARAIN ROY *v.* JANAKI NATH ROY (1917) . . **I. L. R. 45 Calc. 305**

ANALOGOUS DESIGNS.

See DESIGN . **I. L. R. 45 Calc. 606**

ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904).

——— **ss. 10, 21**—*Land Acquisition, Act (I of 1894), ss. 53, 54—Award of Court—Appeal to High Court—Practice.* An appeal lies to the High Court, under ss. 53 and 54 of the Land Acquisition Act (I of 1894) from an award of the Court for acquisition of immoveable property under s. 10 of the

ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904)—*concld.*

——————**s. 10**—*concld.*

Ancient Monuments Preservation Act (VII of 1904). S. 21 of the Ancient Monuments Preservation Act clearly applies to the purchase of moveable antiquities or relics and the compensation which may have to be paid for incidental damage caused by the removal or protection of such objects of historical interest or art-value. In ascertaining the market value of such moveable antiquities and the amount of compensation to be paid to adjacent owners for acts done under the Act such acts being clearly enough indicated and by implication defined in s. 20, only the provisions of the Land Acquisition Act enumerated in s. 21 are to guide the Court. VISHNU NARAYAN *v.* THE DISTRICT DEPUTY COLLECTOR, KOLABA (1917).

I. L. R. 42 Bom. 100

ANNUITY.

—————— *Annuity, if a charge on property.* Where in an *ekrarnama* between A and B it was agreed that A would receive Rs. 150 per month during her lifetime from the share of the estate which she inherited from her son, that B would pay the said sum every month and if he did not pay it, A would be entitled to recover it by suit from the said share: *Held*, that the annuity was a charge upon the said share. The property could be easily ascertained and that being so it did not matter that no schedule of property was given in the deed. The question in all such cases is one of intention. "In equity no charge can be created unless there is an intent to charge." SHYAMPEARY DASYA *v.* THE EASTERN MORTGAGE AND AGENCY CO., LD. (1917).

22 C. W. N. 226

ANNULMENT PROCEEDINGS.

—————— **notice of—**

See LANDLORD AND TENANT.

I. L. R. 45 Calc. 756

APPEAL.

See APPEAL FROM ORDER.

See APPEAL *in forma pauperis.*

See AGRA TENANCY ACT (II OF 1901), SS. 95, 177 (*f*). . **I. L. R. 40 All. 177**

See AGRA TENANCY ACT (II OF 1901), SS. 175, 177, 193.

I. L. R. 40 All. 219

See AGRA TENANCY ACT (II OF 1901), S. 193 . . **I. L. R. 40 All. 652**

See AMENDED LETTERS PATENT, CL. 15.

I. L. R. 42 Bom. 260

See APPEAL TO PRIVY COUNCIL.

I. L. R. 40 All. 497

See CIVIL PROCEDURE CODE (1908), S. 24.

I. L. R. 40 All. 525

See CIVIL PROCEDURE CODE (1908), S. 47; O. XLI, R. 1 . **I. L. R. 40 All. 12**

See CIVIL PROCEDURE CODE (1908), S. 140 O. XXI, RR. 90, 92; O. XLIII, R. 1 (*j*)

I. L. R. 40 All. 122

See CIVIL PROCEDURE CODE (1908), S. 122

I. L. R. 40 All. 1

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 95 **I. L. R. 40 All. 216**

APPEAL—*contd.*

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5, 10.

I. L. R. 40 All. 109

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 6 . **I. L. R. 40 All. 553**

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 22 . **I. L. R. 40 All. 536**

See CIVIL PROCEDURE CODE (1908), O. XLIII, R. 1 . **I. L. R. 40 All. 659**

See CIVIL PROCEDURE CODE (1908), O. XLVII, R. 7 . **I. L. R. 40 All. 68**

See CO-OPERATIVE SOCIETIES ACT (II OF 1912), S. 42 (*5*) AND (*6*).

I. L. R. 40 All. 89

See CONTRACT ACT (IX OF 1872), S. 65.

I. L. R. 40 All. 558

See CRIMINAL PROCEDURE CODE (1908), S. 195 . . **I. L. R. 40 All. 21**

See MISJOINDER . **I. L. R. 45 Calc. 111**

See REVIEW . **I. L. R. 45 Calc. 60**

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 336

—————— **admission of, after time-bar without notice to respondent—**

See LIMITATION . **I. L. R. 41 Mad. 412**

—————— **conversion of, into civil revision petition—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, AND S. 115.

I. L. R. 41 Mad. 554

—————— **prosecution of—**

See LIMITATION . **I. L. R. 45 Calc. 94**

—————— **reversal on—**

See ATTACHMENT BEFORE JUDGMENT.

I. L. R. 45 Calc. 780

—————— **right of—**

See AMENDMENT OF PLAINT.

I. L. R. 45 Calc. 305

1. —————— *Arbitration—Award filed in Court—Application to set aside award—Arbitration Act (IX of 1899), s. 11 (2)—Civil Procedure Code (Act V of 1908), s. 104(f)—Letters Patent, 1865, cl. 15.* No appeal lies under s. 104(*f*) of the Civil Procedure Code from an order refusing to set aside an award made and filed under the provisions of the Arbitration Act. S. 104(*f*) of the Civil Procedure Code does not apply to proceedings under cl. (2) of s. 11 of the Arbitration Act. The Court, however, has jurisdiction to hear the appeal under cl. 15 of the Letters Patent. CAMPBELL & Co. *v.* JEASHRAJ GIRIDHARI LALL (1917).

I. L. R. 45 Calc. 502

2. —————— *Dismissal for default—Order of Special Judge—Bengal Tenancy Act (VIII of 1885), ss. 106, 109A, sub-s. (2)—Civil Procedure Code (Act V of 1908) O. XLI, rr. 17, 19; O. XLIII, r. 1, cl. (t).* An appeal lies from an order refusing to rehear an appeal dismissed for default, even though such appeal has been preferred under s. 109A, sub-s. (2), in a suit under s. 106 of the Bengal Tenancy Act. *Mothur Chandra Majumdar* v. *Tara Sunkar Ghose, 7 C. W. N. 440*, distinguished. MANMATHA NATH DEY *v.* GADADHAR MANA (1917) . **I. L. R. 45 Calc. 638**

APPEAL—*concld.*

3. ——— *Jurisdiction—Written statement, order refusing leave to file—"Judgment"—Letters Patent, 1865, cl. 15—Rules and Orders of High Court, Chap. XIV, r. 3.* No appeal lies from an order made by a Judge sitting on the Original Side, refusing an application by a defendant for leave to file his written statement. Such an order is not a "judgment" within the meaning of cl. 15 of the Letters Patent of 1865. *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company, 8 B. L. R. 433*, referred to. *Mathura Sundari Dasi* v. *Haran Chandra Saha, I. L. R. 43 Calc. 857*, distinguished. MURALIDHAR CHAMARIA *v.* M. R. DALMIA (1917).
I. L. R. 45 Calc. 818

4. ——— *Against preliminary decree, whether competent when appeal is filed after the passing of the final decree but before it is signed—Civil Procedure Code (Act V of 1908), s. 97.* Where in a suit for declaration of title and for partition instituted on the 5th July 1913, the preliminary decree was made on the 14th August 1916, and the final decree was passed on the 11th November 1916 but was not drawn up or signed till the 18th November 1916, and in the meantime on the 16th November the present appeal was preferred against the preliminary decree; and the respondents raised a preliminary objection that the decree having been passed at the date of the filing of the present appeal, the present appeal was incompetent: *Held*, that at the date when the appeal was preferred the only decree the defendant could appeal against was the preliminary decree, as clearly he was not able to appeal against the final decree of which he could not obtain a copy. The right of appeal given by s. 97, Civil Procedure Code, is not taken away by the mere fact that the Judge has passed the final decree. BHAGABAN CHANDRA KAIBARTA DAS *v.* ISHAN CHANDRA KAIBARTA DAS (1918) . . . . . **22. C. W. N. 831**

5. ——— *Change of case in.* In this case it was *held* that the lower Appellate Court had erred in accepting and acting upon a case made in that Court but not in the trial Court. BIRENDRA KISHORE MANIKYA *v.* DOULAT KHAN (1917) . . . . **22 C. W. N. 856**

APPEAL FROM ORDER.

See JURISDICTION
I. L. R. 45 Calc. 926

APPEAL IN FORMA PAUPERIS.

See CIVIL PROCEDURE CODE (1908), O. XLIV, R. 1 . . **I. L. R. 40 All. 381**

See SECURITY FOR COSTS.
I. L. R. 42 Bom. 5

APPEAL TO HIGH COURT.

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904), SS. 10, 21.
I. L. R. 42 Bom. 100

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (ACT V OF 1898), S. 110, O. XLV, R. 5.
I. L. R. 42 Bom. 609

——— *Appealable value—Contract—Breach alleged by both parties—Plaintiff's plea that counter-claim not admissible overruled—Point not raised in plaintiff's appeal against decree in defendant's favour if may be taken by plaintiff in the Privy Council on defendant's appeal against decree in plaintiff's favour in Appeal Court.* Where plaintiff and defendant each alleged breach of contract by the other party, making claims and counter-claims on that basis and the plaintiff's contention that the defendant's counter-claim was not admissible under the Code of Civil Procedure being overruled, decree was passed in defendant's favour, but the plaintiff did not reopen the question in the Appeal Court which reversed the first Court's decree and made a partial decree in favour of the plaintiff: *Held*, on defendant's appeal to the Privy Council, that the question of the admissibility of the counter-claim must be taken to have been decided between the parties in accordance with the contention of the defendant and the plaintiff could not be permitted to raise it for showing that defendant's claim on appeal could not come up to Rs. 10,000 in value. LESLIE AND CO. *v.* N. GIRIAH CHETTIAR (1917).
22 C. W. N. 282

APPRAISEMENT PROCEEDINGS.

See SANCTION FOR PROSECUTION.
I. L. R. 45 Calc. 336

ARBITRATION.

See APPEAL . **I. L. R. 45 Calc. 502**

1. ——— *Suit, after submission, with respect to the subject-matter of the reference—Award given during the pendency of the suit, validity of—Power of Court to stay trial—Civil Procedure Code (Act V of 1908), Sch. II, s. 18).* A private reference to arbitration of a subject of a dispute does not prevent either party from filing a suit in a Court of law in respect of the same matter. The arbitrators thereupon become *functus officio* and any award by them is without jurisdiction. Where there is a previous agreement to refer a matter to arbitration and a suit is filed in respect of the subject-matter of that agreement, the Court has a discretion under s. 18 of the second schedule to the Civil Procedure Code to stay the rtrial of the suit. *Doleman and Sons* v. *Ossett Corporation, [1912] 3 K. B. 257*, and *Sheo Babu* v. *Udit Narain, 12 A. L. J. 757*, followed. *Rama Chandra Pal* v. *Krishna Lal Pal, 17 C. W. N. 351*, explained. Indian legislation on the subject historically reviewed. APPAVU *v.* SEENI (1917).
I. L. R. 41 Mad. 115

2. ——— *Arbitration award proceedings provided for in contract—Stay of arbitration pending decision of suit, when party filed suit impeaching contract on equitable grounds.* In a contract of purchase and sale of goods between plaintiff and defendants there was the usual clause for referring disputes arising out of the contract to arbitration. Plaintiff repudiated the contract on the ground that the broker in the transaction did not disclose that he was a partner of the defendants' firm. Defendants maintained that plaintiff was still bound to take delivery of goods and on plaintiff's refusal referred the dispute to arbitrators mentioned in the contract. The plaintiff filed a suit for a declaration that the contract was not binding on him and obtained an order from Court restraining defendants from proceeding with the arbitration: *Held*, that as this was a case where the plaintiff was impeaching the contract on the ground of fraud, the Court below was right in staying the arbitration proceedings until the suit

ARBITRATION—*concld.*

impeaching the contract was decided. GAJANAND MASKARA *v.* SHAIKH TALEB JALALUDDIN (1917).
22 C. W. N. 535

3. ——— *Award—Non-appearance of plaintiff before arbitrator—Default—Arbitrator, power of, as Civil Court, if can deal under O. IX, r. 8, Civil Procedure Code (Act V of 1908) Sch. II, cls. 14 and 16—Application under O. IX, r. 9—Award leaving matters referred to arbitration undetermined—S. 115—Jurisdiction of High Court—Remission of award to arbitrator by High Court in revisional jurisdiction—Procedure.* A suit was referred to arbitration by a Court on the application of the parties. The terms of the reference provided that the arbitrator should determine the case after hearing the evidence and if one of the parties failed to appear before him he should have power to decide the case *ex parte*. On the date fixed for trial the defendant appeared with his witnesses but the plaintiff did not appear. The arbitrator did not take the evidence on behalf of the defendant but made an award by dismissing the suit for default. The award was filed in Court. Thereupon plaintiff applied to the Munsif for the setting aside of the award on the ground that he could not appear before the arbitrator for illness but the application was rejected and the Munsif passed judgment according to the award. In the course of his order, however, the Munsif expressed an opinion that the ground alleged might be a good ground under O. IX, r. 9, Civil Procedure Code. Plaintiff thereafter applied to the Munsif under O. IX, r. 9, Civil Procedure Code, and then the Munsif set aside the award of the arbitrator and restored the suit to his file. The defendant moved the High Court against that order. *Held*, that the arbitrator had no power to deal with the matter under the provisions of O. IX, r. 8 of the Civil Procedure Code, and that he ought to have heard the evidence on behalf of the defendant; that the award made by the arbitrator should be held to have left undetermined the matters referred to him for arbitration, and that under the provisions of cl. 14 of the Second Schedule of the Code of Civil Procedure the Munsif ought to have remitted the award or the matters referred to arbitration for the reconsideration of the arbitrator; that the application under O. IX, r. 9, Civil Procedure Code, made to the Munsif was incompetent and the Munsif was obviously wrong in setting aside the award of the arbitrator and restoring the suit to his file. *Held, further*, that the proper order to make in this case was that, the order of the Munsif being set aside, the High Court in the exercise of its revisional jurisdiction under s. 115, Civil Procedure Code, should remit the award in the matter referred to arbitration for reconsideration by the same arbitrator on the ground that the award had left undetermined the matters referred to arbitration. GOPAL CHANDRA DAS *v.* KHETRA MOHAN BHUNJA (1918) . . . **22 C. W. N. 933**

ARBITRATION ACT (IX OF 1899).

——— **s. 11** (*2*)—

See APPEAL . . **I. L. R. 45 Calc. 502**

ARBITRATION AWARD.

——— *Reference authorising majority award—Award by majority without consulting others, if valid.* An award made by a majority of arbitrators appointed by the parties without consulting the others is not a valid award, even when the reference authorises the arbitrators to make a majority award. ABU HAMID ZAHIRA ALA *v.* GOLAM SARWAR (1916).
22 C. W. N. 301

ARBITRATOR.

See RESUMPTION OF LAND.
I. L. R. 42 Bom. 668

ARMS.

See ARMS ACT (XI OF 1878).

ARMS ACT (XI OF 1878).

——— **s. 19** (*f*)—*Arms—Finding as to factum of possession of unlicensed arms—Minor, nearing majority, living with his elderly parda-nashin mother—Possession attributed to son.* A parda-nashin lady and her minor son, a young man of some 17 years of age, lived together in the family house. In their house was a small collection of arms of various kinds which had belonged to the father, who, as an honorary magistrate, was exempt from the operation of the Arms Act. There was evidence that the arms were kept clean and that the son at all events took a certain amount of interest in them. *Held*, that a finding that the son was in possession of these arms, and, not having a license for them, was liable to conviction for an offence under s. 19 (*f*) of the Indian Arms Act, 1878, was not open to objection. EMPEROR *v.* GHULAM HUSAIN (1918) . . **I. L. R. 40 All. 420**

ARREARS OF RENT.

——— **suit for—**

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

ASSESSMENT.

See LAND REVENUE CODE (BOM. ACT V OF 1879), s. 85.
I. L. R. 42 Bom. 49

——— *Rateable value—Salt-works—Method of assessment—Assessing Authority to consider what an hypothetical tenant would pay—Premises to be valued for rateable purposes "rebus sic stantibus"—Valuation for assessment based upon a method applied to salt pans in a different country at different times—Method of valuation wrong and illegal—Aden Act (II of 1864), s. 8.* The principles on which property is assessed to the rates are, first, that in assessing any particular property the assessing authority must consider what a tenant from year to year with a reasonable prospect of the continuation of his lease would give for the premises and in considering this, the assessing authority must regard the then occupier as a likely tenant; secondly, that the premises must be valued for rateable purposes "*rebus sic stantibus*," *i.e.*, as they exist at the date of the valuation. *The Queen* v. *School Board for London, 17 Q. B. D. 738, London County Council* v. *Church Wardens, &c., of Parish of Erith and Assessment Committee of Dartford Union, [1893] A. C. 562, Great Central Railway* v. *Banbury Union, [1908] A. C. 315, Davies* v. *Seisdon Union, [1909] A. C. 78, The Queen* v. *Fletton, 3 E. & E. 450, 465*, referred to. In 1909, the plaintiffs obtained from Government a lease of certain lands at Aden for the purpose of constructing salt-works thereon at the annual rental of Rs. 7,000 for the land and a royalty of 8 annas per ton of salt exported. They erected a factory for crushing salt on the land and

ASSESSMENT—*concld.*

the works first commenced to yield salt in 1911. The defendants were the assessing authority for the Aden Settlement. For the year 1909 and 1910 the defendants had, under the powers conferred upon them by Government Notifications, assessed the plaintiffs in the annual rent of Rs. 7,000 payable by them under the lease. In the year 1911, the defendants adopted a different basis of assessment. They assessed the plaintiffs on the basis of half the produce of works less 10 per cent. landlord's deductions. In support of this method of assessment the defendants relied upon a method of valuation considered to have been in vogue for salt-pans in Bombay in the year 1883 and upon a decision which they had obtained in their favour from the Resident's Court at Aden in 1909 in respect of other salt-works at Aden to which the alleged Bombay method of assessment was applied. A question being raised whether the mode of assessment adopted by the defendants in the year 1911 was wrong and illegal. *Held*, that the mode of assessment was wrong and illegal as the defendants made no attempt to value the particular salt-works in question or to say whether the method they applied was such as to result in the assessment that the hypothetical tenant of these premises would pay for them. ABDULLABHOY LALJI *v.* THE EXECUTIVE COMMITTEE, ADEN SETTLEMENT (1918).
I. L. R. 42 Bom. 692

ASSIGNMENT.

——— of lease—

See LEASE . **I. L. R. 42 Bom. 103**
I. L. R. 42 Bom. 734

ASSIGNMENT OF EQUITY OF REDEMPTION.

See MORTGAGE . **I. L. R. 45 Calc. 702**

ATTACHMENT.

See ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115. **I. L. R. 42 Bom. 119**

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

See LIMITATION . **I. L. R. 45 Calc. 785**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 18 . **I. L. R. 40 All. 86**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 22 . **I. L. R. 40 All. 582**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 23 . **I. L. R. 40 All. 197**

——— of alienated property—

See FRAUDULENT ALIENATION.
I. L. R. 41 Mad. 612

——— prayer for—

See EXECUTION PETITION.
I. L. R. 41 Mad. 251

ATTACHMENT BEFORE JUDGMENT.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 13 . . **I. L. R. 41 Mad. 23**

1. ——— *Suit, dismissal of—Reversal on appeal—Termination of attachment—Private sale—Sale in execution of decree—Jurisdiction—Civil Procedure Code (Act V of 1908), s. 115; O. XXXVIII, rr. 9 and 11.* The Court should when dismissing a suit at the same time make the order directing the attachment before judgment to be withdrawn. But even if the order is not made, on the dismissal of the suit the attachment before judgment falls to the ground, whether an appeal is filed or not. *Sasirama Kumari* v. *Meherban Khan, 13 C. L. J. 243*, and *Ram Chand* v. *Pitam Mal, I. L. R. 10 All. 506*, referred to. Where the District Judge has directed property not under attachment to be sold without being first attached, the question raised is one which falls within the scope of s. 155 of the Civil Procedure Code. ABDUL RAHMAN *v.* AMIN SHARIF (1918).
I. L. R. 45 Calc. 780

ATTACHMENT BEFORE JUDGMENT—*concld.*

2. ——— *Attachment of money payable out of jurisdiction by non-resident judgment-debtor, if legal—Court realising money by usurpation of jurisdiction and paying it out—Order, if may be maintained as right on the merits—Recovery of money paid illegally by Court of its own mothion by execution.* It is not competent to a Court in execution of a decree for money to attach at the instance of a decree-holder, a debt payable to the judgment-debtor outside the jurisdiction by a person not resident within the jurisdiction of the Court. Where money has been paid to the Court as a result of such attachment, the order of the Court directing payment of the money should be cancelled and the parties restored to the position which they occupied before the illegal intervention of the Court. Order passed by Court by usurpation of jurisdiction, cannot be allowed to stand on a consideration that a similar order would have been made on the merits by a Court of competent jurisdiction. It is the policy of the law, as a question of public order, to keep inferior Courts strictly within their proper sphere of jurisdiction. It is imperative that money which has been paid out of Court under an illegal order made without jurisdiction must be brought back into court. If the money is not returned to Court by the party who took it out, the Court should of its own motion proceed to realise it by attachment and sale of his properties and by attachment of his person if necessary. SURENDRA NATH GOSWAMI *v.* BANSI BADAN GOSWAMI (1916) . **22 C. W. N. 160**

3. ——— *Omission of Court to order withdrawal of attachment when dismissing suit—Suit decree by Appellate Court—Attachment, if remains in force—Civil Procedure Code (Act V of 1908), O. XXXVIII, rr. 9 and 11.* Where the trial Court made an order for attachment before judgment and after trial dismissed the suit but omitted to make an order in terms of O. XXXVIII, r. 9, withdrawing the attachment and the suit was eventually decreed by the Appellate Court. *Held*, that the attachment did not subsist and fell with the dismissal of the suit in spite of the Court's failure to make the formal order withdrawing the attachment when dismissing the suit. Effect of O. XXXVIII, r. 11, considered. AZIZUR RAHMAN *v.* AMIN SHARIFF (1918) . . **22 C. W. N. 927**

ATTESTATION.

See MORTGAGE-DEED, ATTESTATION OF.
I. L. R. 45 Calc. 747

——— of mortgage deed—

See PARDANASHIN LADY.
I. L. R. 45 Calc. 748

AUCTION PURCHASER.

——— whether a representative of decree-holder.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 144 AND 151 AND O. XXI, R. 90 . . **I. L. R. 41 Mad. 467**

AUCTION PURCHASER—*concld.*

——— **whether a representative of the judgment-debtor—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47 . **I. L. R. 42 Bom. 411**

AUTREFOIS ACQUIT.

——— *Trial for theft and receiving stolen property charged in the alternative—Acquittal by High Court—Subsequent trial under s. 54 A of the Calcutta Police Act (Beng. IV of 1866) relating to the same act os series of acts—Act or possession punishable under s. 54A whether an offence—Criminal Procedure Code (Act V of 1898) ss. 4(1) (o), 236, 237 and 403 (1).* Under s. 403(1) of the Criminal Procedure Code an acquittal of offences under s. 380 and s. 411 of the Penal Code charged in the alternative, bars a subsequent trial for an offence under s. 54A of the Calcutta Police Act (Beng. IV of 1866) in respect of the same act, or series of acts which formed the subject of the previous trial; the case falling within *Illustration* (*a*) of s. 236 and the *illustration* attached to s. 237 of the Criminal Proceudre Code. *Queen-Empress* v. *Croft, I. L. R. 23 Calc. 174,* distinguished. An act or possession punishable under s. 54A of the Calcutta Police Act is an "*offence*" within s. 4 (*1*) (*o*) of the Code. MANHARI CHOWDHURI *v.* EMPEROR (1917) . . . . **I. L. R. 45 Calc. 727**

AWARD.

See APPEAL . **I. L. R. 45 Calc. 502**

See ARBITRATION . **22 C. W. N. 933**

AWARD OF COURT.

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904), SS. 10, 21.
I. L. R. 42 Bom. 100

B

BALANCE SHEET.

See COMPANY . **I. L. R. 45 Calc. 846**

BANKER.

See SALE OF GOODS.
I. L. R. 42 Bom. 16

BANKING COMPANY.

See COMPANY . **I. L. R. 42 Bom. 264**

BENAMIDAR.

——— **right of—**

See EX PARTE DECREE.
I. L. R. 45 Calc. 920

——— **transferee from, right of suit of—**

See MORTGAGE . **I. L. R. 41 Mad. 403**

——— *Decree against benamidar—Sale of property held in benami in execution of decree, if binds beneficiary—Symbolical possession delivered, if binds beneficiary.* Although a decree against a *benamidar* may bind the beneficiary, symbolical possession delivered in execution thereof is of no avail except against the actual party to the suit or the proceeding in execution, and the beneficiary who was no party to either is not affected by it. *Quære:* Whether when a money-decree has been obtained against the *benamidar,* the beneficiary is necessarily bound by the sale of the property held in *benami* in execution of the decree. SATISH CHANDRA SARKAR *v.* BROJO GOPAL DUTTA (1918) . . . . . **22 C. W. N. 807**

BENGAL ACTS.

——— **1866—IV.**

See CALCUTTA POLICE ACT.

——— **1870—VI.**

See VILLAGE CHAUKIDARI ACT.

——— **1876—VI.**

See CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——— **1879—IX.**

See COURT OF WARDS ACT.

——— **1895—I.**

See PUBLIC DEMANDS RECOVERY ACT.

——— **1899—III.**

See CALCUTTA MUNICIPAL ACT.

——— **1909—V.**

See EXCISE ACT.

——— **1911—V.**

See CALCUTTA IMPROVEMENT ACT.

BENGAL ACT VIII OF 1869.

——— *Bengal Tenancy Act (VIII of 1885), sale of non-transferable holding in execution of a decree for rent, if permissible under, in Sylhet District—Bengal Act VIII of 1869, ss. 59, 64 and 65 whether govern such cases.* The respondent, who are 8 annas co-sharer landlords of a jote in the District of Sylhet, obtained a decree for rent in a suit in which the other co-sharer landlords were parties, and applied for execution of the decree by sale of the non-transferable jote of the judgment-debtors. The lower Courts treated the case as one falling under the provisions of the Bengal Tenancy Act: *Held,* that the case is governed by the provisions of Bengal Act VIII of 1869 and not the Bengal Tenancy Act. As the holding is not transferable, the decree-holder cannot obtain satisfaction of his decree by the attachment and sale of the non-transferable holding of the judgment-debtors under the provisions of s. 59, or s. 64 or s. 65 of the Bengal Act VIII of 1869. ALOK CHANDRA PAL *v.* JALURAM NAMASUT (1918).
22 C. W. N. 566

BENGAL TENANCY ACT (VIII OF 1885).

See SALE . . **I. L. R. 45 Calc. 294**

——— **s. 5, sub-ss.** (*1*), (*4*) (*b*) **and** (*5*) **and s. 103B**—*Status of tenant, whether tenurerholder or raiyat—Purpose for which land was acquired and extent of holding or tenure—Mode of determining status—Presumption of correctness of entry in Record of Rights—Rebuttal of, by proof of attendant circumstances showing incorrectness.* The defendant held more than 250 acres of land in a village which formed part of the plaintiff's zemindari in the district of Cuttack under a lease granted by the plaintiff's predecessor in title in 1901 to a person who assigned it to the defendant in 1907. In proceedings taken to prepare the "Record of Rights" for the land covered by the lease, the defendant was entered as a tenure-holder, but on his objection

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 5**—*concld.*

the Assistant Settlement Officer recorded him as a "settled raiyat at a fixed rent." The lease was an ordinary reclamation lease of the land permanently to the lessee at a fixed rent "to make it fit for cultivation according to your will and you shall hold the same by cultivating it or having it cultivated, and you shall be competent to make such other arrangements or adopt such other convenient steps as you consider necessary for cultivating the same." In a suit brought under the provisions of s. 106 of the Bengal Tenancy Act (VIII of 1885) for rectification of the entry by recording the defendant as tenure-holder: *Held*, on the construction of the Act, that in determining the status of a tenant, whether he is a tenure-holder or a raiyat, what has to be considered is (*a*) the purpose for which the land was acquired, and (*b*) the extent of the tenure or holding. Fixity of rent was no criterion for the determination of that question, for a tenure may be held at a fixed rent equally with a raiyati holding. The statutory presumption under s. 5, sub-s. (*5*) applied to the defendant as holding more than 100 acres, and the purpose appeared to be that the land should not be cultivated by the personal agency of the defendant himself. Here the land was leased to a man of means, a resident of another place, for the purpose of reclaiming the land, and rendering it fit for cultivation, the agency to be employed for cultivating it being left to his discretion. The Courts were right in looking at the attendant circumstances to judge of the purpose for which the lease was acquired and to determine the status of the defendant. The presumption under s. 103-B that an entry in a "Record of Rights" finally published "shall be presumed to be correct until it is proved by evidence to be incorrect," was fully rebutted by the circumstances referred to by the majority of the Courts in India in arriving at the conclusion that the defendant was a tenure-holder and not a raiyat. DEBENDRA NATH DAS *v.* BIBUDHENDRA MANSINGH BHRAMARBAR ROY (1918). . . . **I. L. R. 45 Calc. 805**

——— **ss. 30, 50**—*Enhancement of rent at the instance of the landlord—Tenant, if bound to produce rent receipts when pleading uniform payment for 20 years, when zemindar's papers show that.* In a suit for enhancement of rent under s. 30 of the Bengal Tenancy Act, all that has to be proved to entitle the tenant to the presumption under s. 50 is that he held at a rent or rate of rent which had not been changed during 20 years immediately preceding the institution of the suit, and ordinarily the tenant files his rent receipts which are the best evidence of non-variation; but when the zemindar's own papers, for example, *chittas* produced by him, show that, the tenant need not file the rent receipts. MADHUSUDAN MALLIK *v.* JAMIRUDDIN SHEIKH (1917) . . . **22 C. W. N. 999**

——— **ss. 31A, 50** (*2*), **113, 115**—

See LANDLORD AND TENANT.

I. L. R. 45 Calc. 930

——— **ss. 40, 109**—

See RENT . . **I. L. R. 45 Calc. 769**

——— **s. 46**—*Non-occupancy raiyat, ejectment of, on ground of refusal to agree to enhancement—Tender of an agreement—Agreement, meaning of, if includes proposed agreement—Draft of the proposed agreement without stamp, service of, if sufficient—Notice, service of, with copy of the agreement, if required—Procedure.* The word "agreement" mentioned in the first sub-section of s. 46 of the Bengal Tenancy Act cannot be strictly construed because an agreement cannot come into existence unless it has been assented to by both parties and where it requires to be reduced to writing until it has been executed. The statute means an agreement proposed by the landlord and the only requisite is that the document containing the terms of the proposed agreement be tendered. Where a landlord sent a draft of the proposed agreement duly stamped to the Court and the Court served on the tenant a copy identical with the draft but without a stamp on it, and it was said that it was not the original of the agreement that was tendered to the tenant but only a copy and hence there was no valid tender: *Held*, that there was a valid of the agreement as required under s. 46 of the Bengal Tenancy Act. If the defendant had executed the draft tendered to him, it would have been a sufficient compliance with the terms of the section: *Held*, further, that there is nothing in s. 46 of the Bengal Tenancy Act that requires a notice to be served along with the copy of the agreement though it may be convenient to do so. The statute does not make it obligatory. PORT CANNING AND LAND IMPROVEMENT CO., LD. *v.* NOYAN PARAMANIK (1918) . **22 C. W. N. 558**

——— **s. 49**—*Ejectment of under-raiyat holding under harsana* patta *not for specified time—Notice necessary to terminate tenancy—S. 85, lease in contravention of—Grantor, if may challenge validity—Estoppel.* In a suit for ejectment of the defendant, an under-raiyat holding under *harsana patta* not for any specified time, it appeared that the plaintiff (who was the raiyat) before the expiry of a year served a six months' notice to quit on the defendant and on non-compliance therewith brought the suit more than one year after the service of notice: *Held*, that the tenancy was lawfully terminated and the plaintiff was entitled to recover possession of the land. *Per* MOOKERJEE, J.—That for agricultural tenancies of this description, the provision for notice is to be found in s. 49 of the Bengal Tenancy Act which prescribes no form of notice and gives no indication as to its length, but only protects the under-raiyat from ejectment until the end of the agricultural year in which a notice to quit is served upon him by his landlord. *Per* BEACHCROFT, J.—That if it be found as a fact that a raiyat giving a permanent sublease in contravention of the provision of s. 85 (*2*) has induced his lessee to accept it on the faith of a representation that his own status was such as to validate such a sublease, he will not afterwards be allowed to prove in a suit against his lessee that his status was other than it was in the first instance represented to be. That it is absolutely necessary to plead estoppel if it is intended to rely on it. This is not a technical rule of pleading but a matter of substance, for if estoppel is pleaded it may be possible for the other side to shew that there could be no estoppel, the real facts being known. That the validity of a lease granted in contravention of s. 85 of the Bengal Tenancy Act can be questioned by the grantor. Cases on the point reviewed. CHANDI CHARAN NATH *v.* SAMLA BIBI (1917).

22 C. W. N. 179

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **ss. 49, 133**—*Under-raiyat, if can acquire occupancy right by custom or usage—Status of under-raiyat with right of occupancy, if he remains an under-raiyat—Ejectment of such an under-raiyat, if s. 49, Bengal Tenancy Act, applicable.* An under-raiyat can acquire a right of occupancy by custom or usage, and on acquisition of such occupancy right continues to be an under-raiyat and is not liable to be ejected under s. 49 of the Bengal Tenancy Act. GOPAL MANDAL *v.* JAPAI SANKHARI (1918) . . . **22 C. W. N. 618**

——— **ss. 50, sub-ss.** (*1*), (*2*), (*3*)—*Presumption in favour of raiyat if rebutted by acquisition of non-transferable holding as representing creation of a new tenancy—Subdivision and amalgamation of raiyati holdings—New kabuliyat not varying the rent but stating it to be variable, if rebuts presumption.* Where in a proceeding instituted by the landlord for the settlement of fair rent under s. 105, Bengal Tenancy Act, the landlord contended that the presumption arising under s. 50, sub-s. (*2*) to the benefit of which the tenant was *primâ facie* entitled was rebutted by the acquisition of non-transferable holdings which represented the creation of a new tenancy: *Held*, that the purchaser of a non-transferable occupancy holding cannot claim recognition by the landlord as a matter of right but if he obtains recognition from the landlord whether by payment or otherwise, then in the absence of special circumstances he is admitted into the original tenancy with all its incidents and becomes the successor in interest of the vendor. *Per* RICHARDSON, J. Cls. (*1*) and (*2*) of s. 50 of the Bengal Tenancy Act assume the continuity and identity of the tenure or holding throughout the whole period from the permanent settlement onwards. In view of cl. (*3*), in the case of a raiyat the rule and the presumption contained in cls. (*1*) and (*2*) apply to land which at the time when the question arises, may form part of the raiyat's holding. The rule and the presumption may thus be applicable to several parcels of land of which the holding consists when the question arises. Part of the holding may be inherited land. Part may have been acquired by purchase from another raiyat. In either case the raiyat may tack on his own occupation of the land at an unvaried rent to the occupation at an unvaried rent of his predecessors in interest, who, as regards land acquired by purchase from another raiyat, will include his vendor and his vendor's predecessors: The inclusion in a *kabuliyat* executed subsequently to the creation of the holding of a condition purporting to make the rent variable without any variation in fact does not affect the presumption arising under cl. (2) of s. 50. The true question in such cases is whether the instrument on which the landlord relies is merely confirmatory of the pre-existing interest or tenancy or whether it creates a new tenancy, and in the case of raiyati holdings, this question must be considered with reference to the provisions contianed in cl. (*3*). ABHOYA SANKAR MAJUMDAR *v.* RAJANI MONDAL (1918). **22 C. W. N. 904**

——— **s. 50** (*2*)—

1. ——— *Amalgamation of several tenures and stipulation by tenant to pay enhanced rents—New tenancy.* Where four originally separate tenures were in 1853 amalgamated and by a *kabuliyat* of that year the tenant expressly stipulated to pay enhanced rent: *Held*, that the

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 50**—*concld.*

presumption under s. 50 (*2*) of the Bengal Tenancy Act arising from proof of payemnt of rent at the same rate for 20 years before the suit was rebutted. UPENDRA NATH GHOSH *v.* GOPI CHARAN SAHA (1916) . . . . . **22 C. W. N. 321**

2. ——— *Tenants producing rent receipts showing payment by themselves of same rent for 20 years—Presumption that tenancy commenced from permanent settlement—Onus to show former tenant predecessor or not of present tenants, on whom.* In a proceeding under s. 105 of the Bengal Tenancy Act brought by a landlord against a raiyat for settlement of fair rent: *Held*, that when one the defendants have produced rent receipts covering a period of over 20 years showing that they paid rent at a uniform rate for that period, they are entitled to the presumption under s. 50 (*2*) of the Bengal Tenancy Act and it is for the landlord to show that the persons who were formerly on the land were not the predecessors of the defendants. GOPAL CHANDRA BANERJEE *v.* MAHOMED SOLEMAN MULLICK (1916). **22 C. W. N. 126**

3. ——— *Kabuliyat of 1840 agreeing to pay enhanced rent at parganah rate—Presumption, rebuttal of.* A *Kabuliyat* of 1840 by which the tenant expressly stipulated to pay enhanced rate according to the parganah rate rebutted the presumption arising from payment of the same rate of rent during 20 years before the suit. UPENDRA NATH GHOSH *v.* DWARKA NATH BISWAS (1916) . . . **22 C. W. N. 322**

——— **s. 52**—*Enhancement of rent on account of excess area—What the landlord has to prove—Shifting of onus.* In a suit for enhancement of rent on the ground that the tenants are in possession of land proved by measurement to be in excess of the area for which rent has been previously paid, the burden of proving an increase in the area for which rent has been previously paid is on the landlord who may discharge the burden in two ways, *viz.* :—(i) By proving that the tenant is in possession of excess land outside the boundaries of land originally settled with him, for instance, land obtained by encroachment or alluvial increment. (ii) By proving that at the original settlement of the land the rent was fixed at a rate per bigha or other unit of measurement or at differential rates according to the quality of the land and so forth, and that in fact and substance the agreement was that the tenant should pay at that rate or at those rates for all the land of which he was put in possession according to its true area, and by further proving that the existing rent is less than the rent payable under such agreement. Proof by the landlord of the existence of excess area shifts the burden of proof from the landlord to the tenant. DHRUPAD CHANDRA KOLEY *v.* HARI NATH SINGH (1918) . . . . . **22 C. W. N. 826**

——— **ss 69, 70**—

See SANCTION FOR PROSECUTION.
I. L. R. 45 Calc. 336

——— **s. 74**—

See PESHKOSH. **I. L. R. 45 Calc. 866**

——— **s. 83**—*Subdivision of tenancy—"Express consent in writing" how established—"Rent-roll," what is, jama-wasil-baki papers, if—Road-cess*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 83—*concld.*

return how far evidence of consent. An "express consent" in writing, within the meaning of s. 88 of the Bengal Tenancy Act as amended by Act I, B.C., of 1907 means a consent opposed to one which is to be implied from the document produced to prove it. *Jama-wasil-baki* papers which are annual statements of the rents payable and received from a particular estate are not landlord's "rent-roll" within the meaning of the proviso to the section. Road-cess returns filed by a co-sharer of the landlord having been produced to prove a sub-division of the tenancy within the meaning of s. 88 of the Bengal Tenancy Act: *Held*, that before such a document could be referred to establish express consent in writing, it must be proved, first, that there had been consent in writing, and, secondly, that the consent in writing though sought for could not be produced and therefore must be presumed at any rate against the person who made it. The road-cess return could not be taken in evidence as principal evidence to prove consent in writing which apparently did not exist. RAJANI SUNDARI DASSI *v.* HARA SUNDARI DASSI (1917).
22 C. W. N. 693

——— s. 85—*Lease exceeding nine years—Under-raiyat, right of, to sue for recovery of possession on declaration of title—Possession.* Although an under-raiyat's lease was in excess of what a raiyat is entitled to grant to an under-raiyat under the provisions of s. 85 of the Bengal Tenancy Act, yet if the under-raiyat was in possession of the property on the basis of the *kabuliyat* he has sufficient interest in the property to recover the land. GOUR MONDAL *v.* BALARAM MANJI (1917).
22 C. W. N. 61

——— s. 86—*Non-transferable raiyati holding—Sale of a portion by raiyat—Subsequent surrender of same by him—Landlord, if may eject transferee—Fraud—Knowledge.* *Per* TEUNON, J.—Irrespective of fraud, collusion or knowledge, a landlord who accepts from a raiyat the surrender of a portion of the holding after the same had been sold by him, is not entitled to eject the transferee. The raiyat's rights in the portion having been extinguished, by the surrender or grant to the landlord, the latter took nothing. Sale of a part of a holding may be reasonably argued to be an incumbrance or limitation of the raiyat's rights in the whole and should therefore operate to prevent a surrender whether of the whole or the part. *Per* RICHARDSON, J. (*contra*). On the authorities sale of a part of a raiyati holding is not an incumbrance within the meaning of cl. (6) of s. 86 of the Bengal Tenancy Act. On the authorities the landlord (apart from fraud) has the right to re-enter if the whole or a part of a non-transferable raiyati holding be relinquished or surrendered by the raiyat after the same has been sold by him. DASTUR ALI *v.* RAM KUMAR GOPE (1918) . . **22 C. W. N. 972**

——— s. 86 (6)—

1. ——— *Vendee of portion of non-transferable raiyati holding, if may be evicted by landlord in whose favour vendor surrenders the portion after sale.* A raiyat who has sold a portion of his non-transferable occupancy holding has parted with all his rights in the portion in favour of the purchaser, and has no interest in it to surrender. Moreover, surrender may be looked upon as a transfer or grant and whatever binds the raiyat binds the landlord in whose favour he surrenders. The landlord cannot on accepting a surrender of the part of the holding sold by the raiyat sue to evict the transferee. ANANDA MOHAN ROY CHOWDHURY *v.* GURUDAYAL SAHA (1917).
22 C. W. N. 965

2. ——— *Sale of portion of non-transferable raiyati holding—Surrender by vendor of same and re-settlement taken by him of rest—Implied surrender—Landlord, if may evict purchaser.* Where a raiyat expressly surrendered a part of his non-transferable holding which, prior to such surrender he had sold, and took a new settlement of the remainder: *Held*, that this operated as a surrender of the whole holding (express as to a portion and implied as to the rest) and as no fraud on the part of the landlord was established, he was entitled to evict the purchaser from the portion sold. TAMIJ MUNSHI *v.* BROJENDRA KISHORE ROY CHOWDHRY (1918) . . . **22 C. W. N. 967**

——— ss. 103B, 106—

See LAKHERAJ LANDS.
I. L. R. 45 Calc. 574

——— s. 104H

1. ——— *Limitation Act (IX of 1908), s. 29 (1) (b)—Civil Procedure Code (Act V of 1908), s. 80—Period of notice to Secretary of State, if to be deducted in computing the six months within which suit to be brought.* In a suit against the Secretary of State under s. 104H of the Bengal Tenancy Act, in computing the period of six months prescribed by cl. (2) of the section, the plaintiff is not entitled to deduct two months in respect of the notice which he is bound to give to the Secretary of State under s. 80 of the Civil Procedure Code. SECRETARY OF STATE FOR INDIA *v.* SHIB NARAIN HAZRA (1918) . **22 C. W. N. 802**

2. ——— *Period of limitation for a suit under—Limitation Act (IX of 1908), s. 15, cl. (2) and s. 29,—Time of the currency of a notice under s. 80, Civil Procedure Code (Act V of 1908), if can be excluded in calculating the period of limitation for such a suit.* The provisions of s. 15, sub-s. (2) of the Indian Limitation Act do not apply to a suit instituted under the terms of s. 104H of the Bengal Tenancy Act. A suit under s. 104H must be brought, in any event, within six months as specified in that section and the plaintiff is not entitled to exclude the time during the currency of a notice to the Secretary of State whom he has joined as a defendant. GANGADHAR NANDA *v.* JANOKIMONI DASI (1918).
22 C. W. N. 817

——— ss. 104H, 111A—

See LIMITATION . **I. L. R. 45 Calc. 645**

——— ss. 104H, (2), 184, 185—

See SUIT . . **I. L. R. 45 Calc. 934**

——— ss. 106, 109A (2)—

See APPEAL . **I. L. R. 45 Calc. 638**

——— s. 109A, sub-s. (3), appeal under—

See PROCEDURE . **L. R. 45 I. A. 183**

——— ss. 159, cl. (b), 179—

See LEASE . . **I. L. R. 45 Calc. 940**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

———— **ss. 161, 163** (2) (*b*), **167**—*Mortgage of share of holding, if incumbrance to be annulled.* A mortgage of a portion of a non-transferable occupancy holding is an incumbrance within s. 161 of the Bengal Tenancy Act, and a purchaser of the holding at a rent sale under s. 163 (2) (*b*) of the Act takes the property subject to the mortgage, unless it is annulled by him in the only mode provided by law, *viz.*, under s. 167, of the Act. In a suit by the mortgagee to enforce his bond against the tenants of the holding and the purchaser at the rent-sale, the landlord is not a necessary party. PRAN KRISHNA PAL *v.* ATUL KRISHNA MUKERJI (1917) . . . . . **22 C. W. N. 662**

———— **ss. 161, 167**—

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 756

———— **s. 167**—*Annulment of incumbrances—Procedure to be strictly followed—Service of notice, entry in order-sheet if sufficient proof of—Single suit for rent of entire taluk after same was split up—Consequential sale, if rent-sale.* The destruction of valuable incumbrances is a very severe measure which the law allows only if a certain procedure is strictly followed, and when a party wishes to enforce that severe measure he must show that he has strictly followed the procedure laid down. An entry in the order-sheet that notice has been served is not sufficient proof of service of notice. Where it appeared that what was formerly one taluk was split up into several different taluks, a sale of the entire taluk in execution of a decree obtained in a single suit for rent due upon the entire taluk was not a sale for arrears of rent within the meaning of the Bengal Tenancy Act. PRAFULLA NATH TAGORE *v.* SHITAL KHAN (1918).
22 C. W. N. 788

———— **ss. 167, 169**—

See SALE . . **I. L. R. 45 Calc. 151**

———— **s. 169** (*c*)—*Decree-holder, if can get interest on arrears of rent paid to him from the balance of sale-proceeds.* Where a decree-holder landlord applied under s. 169, cl. (c), of the Bengal Tenancy Act for payment to him out of the sale-proceeds of the rent with interest and costs due to him between the date of the institution of the suit and the date of sale, and the Munsif directed payment of the amount of rent only, but refused to pay the amount of interest and costs: *Held*, that the Munsif's order disallowing interest was wrong, and that the decree-holder landlord was entitled to get interest on the rent due to him at the statutory rate. PRAFULLA NATH TAGORE *v.* MATABUDDIN MANDAL (1917) . . **22 C. W. N. 323**

———— **Sch. III, cl.** (*6*)—*Execution, application for—Rent decree—Limitation—Execution sale set aside—Execution case dismissed for default—Fresh application for execution, if a continuation of the previous execution proceedings.* A rent decree was obtained on the 14th June 1911. Application for execution was made on the 6th March 1914, and the sale took place on the 25th April 1914. On the application of the judgment-debtor the sale was set aside on the 16th September 1914. On the 28th September 1914 the execution case was dismissed in these terms: "Sale set aside, decree-holder taken no further steps. Case dismissed for default." The decree-holder appealed from the order setting aside the sale but the appeal was dismissed on the 2nd January 1915. On the 16th February 1916 the decree-holder filed a fresh application for execution: *Held*, that the application for execution made on the 16th February 1916 was time-barred under cl. (*6*) of Sch. III of the Bengal Tenancy Act; that the previous application ended with the order of the 28th September 1914 and there was no continuity between that application and the application made on the 16th February 1916. MIDNAPUR ZEMINDARI COMPANY *v.* DINA NATH SAHU (1918) . . **22 C. W. N. 766**

BENGAL TENANCY ACT (VIII OF 1885)—*concld.*

———— **Sch. III cl.** (*6*)—*concld.*

BILL OF EXCHANGE.

See C. I. F. CONTRACTS.
I. L. R. 42 Bom. 473

BLINDNESS.

See HINDU LAW—INHERITANCE.
I. L. R. 45 Calc. 17

BOMBAY ACTS.

———— **1879—V.**

See LAND REVENUE CODE (BOMBAY).

———— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

———— **1888—III.**

See BOMBAY CITY MUNICIPAL ACT.

———— **1898—IV.**

See CITY OF BOMBAY IMPROVEMENT TRUST ACT.

———— **1901—III.**

See DISTRICT MUNICIPALITIES ACT.

BOMBAY CITY IMPROVEMENT ACT (BOM. IV OF 1898).

———— **ss. 25, 29**—

See RECOUPMENT.
I. L. R. 45 Calc. 343

BOMBAY CITY MUNICIPAL ACT (BOM. III OF 1888 AS AMENDED BY BOM. ACT V OF 1905).

———— *Construction of Act, ss. 296, 297, 299, 301—Powers of Municipal authorities acting in conformity with terms of Act—"Preservation of line of street"—Building a bridge over level-crossing of railway—Land Acquisition Act and compensation to owners of land acquired.* Under the Bombay City Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), the Municipal authorities have power to acquire land for widening, extending and improving a public street, and to pay compensation to the owner of the land, notwithstanding that the purpose for which the land is taken is not solely the "preservation of the line of the street," but includes the building of a bridge to carry the road over a railway on the level of the street. They are not restricted to acquiring the land, and paying compensation for it under the Land Acquisition Act. They can prescribe a line for the street and take possession of the part of the owner's land which falls within the line, and so avoid having to proceed under the latter Act. Cases in which it has been held that powers conferred only for a statutory purpose cannot be validly exercised

BOMBAY CITY MUNICIPAL ACT (BOM. III OF 1888 AS AMENDED BY BOM. ACT V OF 1905)—*concld.*

for a different purpose were not in point. Such an exercise of those powers is outside the Act which confers them. In the present case the exercise of the powers given was within, and in strict conformity with the terms of the Act. The "preservation of the line of the street" was not laid down as the definite and sole object for which the power is to be exercised. ABDUL RAHIM MAHOMED *v.* MUNICIPAL COMMISSIONER FOR CITY OF BOMBAY (1918) . . . . **I. L. R. 42 Bom. 462**

BOMBAY CIVIL CIRCULARS.

——— **Ch. II, Cl. 91, sub-cl. 16—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 70, O. XXI, *r.* 72.
I. L. R. 42 Bom. 621

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

——— **ss. 70, 113 and 122**—*Public street—Projection—Projecting a shop-board into a public street without permission or without paying fees—Surat City Municipality's By-laws 3 and 10—By-law not ultra vires.* The accused rented a shop on a public street and projected therefrom a shop-board into the street without having obtained permission of the Municipality and without paying the fees prescribed in that behalf by the Municipality in its by-law 10. On prosecution for offences under ss. 113 and 122 of the Bombay District Municipalities Act, 1901, the accused contended that by-law 10 was *ultra vires*: *Held*, that the by-law 10 was not *ultra vires* of the Municipality; and that the accused had contravened the by-law. EMPEROR *v.* NAGINDAS (1918).
I. L. R. 42 Bom. 454

BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879).

——— **s. 48—**

See LAND REVENUE CODE (BOM. ACT V OF 1879), s. 48.
I. L. R. 42 Bom. 126

——— **ss. 74, 76—**

See RAJINAMA AND KABULIYAT.
I. L. R. 42 Bom. 359

——— **s. 217—**

See KADIM INAMDAR.
I. L. R. 42 Bom. 112

BOMBAY MUNICIPALITY.

1. ——— *Improvement Trustees—Streets—Vesting—Building Line—Compensation—Interest—City of Bombay Municipal Act (Bombay Act III of 1888), ss. 300, 301—City of Bombay Improvement Act (Bombay Act IV of 1898), ss. 41, 45.* When the Trustees for the Improvement of the City of Bombay, constituted by Bombay Act IV of 1898, having given notice under s. 41 of that Act to the Municipal Commissioner that an existing street is required by them under a new street scheme, construct the new street with a building line set forward from the old building line, the strip of land between the two building lines does not vest in the trustees. The vesting in the trustees under the notice is co-extensive with the revesting under s. 45, sub-s. (*2*). When under s. 300, sub-s. (*1*) of the City of Bombay

BOMBAY MUNICIPALITY—*concld.*

Municipal Act (Bombay Act III of 1888) premises are compulsorily ordered to be set forward to the building line, the corporation is not entitled under the Act to compensation from the owner of the premises for land which prior to the order vested in the corporation, but which will be covered by the premises as ordered to be set forward. Unless there is something in the contract between the parties which necessarily imports otherwise, the date when one party enters into possession of the property of another is the date from which interest upon the unpaid price should run. RATANLAL CHOONILAL PANALAL *v.* MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY (1918).
L. R. 45 I. A. 233

2. ——— *Public Streets—Powers—Acquisition of adjoining Land—Compensation—Preservation of Regular Line—Collateral object—City of Bombay Municipal Act (III of 1888 and V of 1905), ss. 296. 297, 301.* By s. 297 of the City of Bombay Municipal Act, the Municipal Commissioner may prescribe a regular line on each side of a public street, and if the line is so prescribed that any land not vesting in the Corporation falls within it, the Commissioner may, by s. 299, take possession of it on behalf of the Corporation, the former owner receiving compensation under s. 301. Ss. 297 to 301 are headed in the Act "Preservation of regular line in public streets." By s. 296 the Commissioner has power to acquire any land required for widening, extending or otherwise improving any public street, subject to the payment of compensation under the Land Acquisition Act (I of 1894). In 1909 the Commissioner prescribed a line on one side of a public street so that land belonging to the appellants fell within it, and, having served them with notice, took possession. The Commissioner wished to acquire the land for the purpose of widening the street in connection with a contemplated bridge carrying the street over certain level crossings. The appellants contended that the procedure under ss. 297, 299 and 301 was inapplicable and the proceedings *ultra vires*, and that the land could only by acquired subject to payment of compensation under the Land Acquisition Act, 1894: *Held*, that the powers given by ss. 297 and 299 of the Act could be exercised although the motive of the Commissioner, who acted in good faith and in the discharge of his duties, was not to preserve the regular line of the street, and that consequently the compensation payable to the appellants was to be calculated according to s. 301 of the Act, and not under the Land Acquisition Act, 1894. NARMA *v.* BOMBAY MUNICIPAL COMMISSIONER (1918) . . . . **L. R. 45 I. A. 125**

BOMBAY POLICE ACT (BOM. IV OF 1902).

——— **ss. 106, 107—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 514.
I. L. R. 42 Bom. 400

BOMBAY REGULATION (IV OF 1827).

——— **s. 26—**

See CUSTOM . . **I. L. R. 45 Calc. 450**

BOND.

See HINDU LAW—BOND.
I. L. R. 40 All. 17

BOND—*concld.*

——— **for appearance**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 514.
I. L. R. 42 Bom. 400

BREACH OF CONTRACT.

See SALE OF GOODS.
I. L. R. 45 Calc. 28

——— **by workman**—

See WORKMANS BREACH OF CONTRACT ACT (XIII OF 1859), s. 2.
I. L. R. 40 All. 282

BRITISH BELUCHISTAN REGULATION (IX OF 1896).

——— **s. 10**—

See RES JUDICATA **I. L. R. 45 Calc. 442**

BROTHEL.

——— *Order of Magistrate directing discontinuance of use of house as such—Jurisdiction of District Magistrate to stay order—Eastern Bengal and Assam Disorderly Houses Act (II of 1907), ss. 2, 3.* The District Magistrate has no jurisdiction under the law to interfere with the order of a Criminal Court under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act (II of 1907) and stay its operation. *Rajani Khemtawali* v. *King Emperor*, 14 C. W. N. 404, referred to. LALIT MOHAN CHAKRAVARTI *v.* HEMENDRA KUMAR DE (1917) . . . **I. L. R. 45 Calc. 301**

BUILDING.

See DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), s. 96, SUB-SS. (*1*), (*2*), (*3*), (*4*). **I. L. R. 42 Bom. 629**

BUILDING FINE.

——— **Collector's power to levy.**

See LAND REVENUE CODE (BOM. ACT V OF 1879), s. 48.
I. L. R. 42 Bom. 126

BURMESE BUDDHIST LAW.

——— *Adoption—Kittima adoption—Publicity and notoriety essential—Forfeiture of adoption by kittima son separating from adoptive parents—Distinction where there are other children—Intention to break tie with adoptive parents—Contest between two claimants each claiming the whole estate.* A child adopted under the Burmese Buddhist Law according to the fullest form of adoption, and retaining his status as an adopted child till the death of his adoptive parents, is entitled to inherit their estate as if he were a natural and lawful child, either in the absence of other children or in competition with them. Such a child is called a *kittima* child. There is no ceremony of adoption, and it is not necessary for one who claims adoption to point to any particular statement made or act done by his adoptive parents on a particular date. But on the other hand the adoption must be a matter of publicity and notoriety. *Ma Me Gale* v. *Ma Sa Yi*, I. L. R. 32 Calc. 219; L. R. 32 I. A. 72, and *Ma Ywet* v. *Ma Me*, I. L. R. 36 Calc. 978; L. R. 36 I. A. 192, followed. A *kittima* child may forfeit his right of inheritance by separating from his adoptive parents, this being considered an act of ingratitude: see the texts set forth in s. 195 of Gaung's "Digest of Burmese Buddhist Law." These authorities, however, draw a distinction between the cases where there are other children with whom the *kittima* child seeks to compete and share, and cases where he has no such competitor, and in the latter instance allow him to inherit in whole or in part notwithstanding his separation. The true principle on which the rule of forfeiture rests is that it is a matter of intention. The fact that the child goes to live apart is some evidence of an intention to break the bond; and it is easier to presume this where the adoptive parents have other children who can perform the duties and receive the estate. The extent of the separation is to be also taken into account. The distance may be so great as to render it impracticable for the child to continue to discharge duties to the adoptive parents, and in that case it probably works a forfeiture. But if the distance be not great, if the separation of residence be with the consent of the adoptive parents, and if the child is ready and willing to discharge filial duties after this separation, the bond is not broken. This is the result of the modern decisions. Chan Toon's "Principles of Buddhist law," 88 to 95 where the authorities are given, and *Maung Shwe Thwe* v. *Ma Saing*, 2 U. B. Rul. (1897—1901) 13[illegible], referred to. In this case where each of the parties claimed to be the sole adopted son of the same adoptive parents, and in that capacity to be entitled to succeed to their whole to the exclusion of the other: *Held* (reversing the decision of the Chief Court), that on the evidence both the claimants were adopted heirs, and that, it not being contended for the appellant that there would be any legal objection to the widow adopting a second heir, or that the position of a son so adopted would be in any way inferior to that of the first adopted son, they were both entitled to inherit the estate. As in that case both of them had asked for too much, each should bear his own costs of the litigation. MAUNG THWE *v.* MAUNG TUN PE (1917) . **I. L. R. 45 Calc. 1**

BY-LAW.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), SS. 70, 113, 122 . **I. L. R. 42 Bom. 454**

C

C. I. F. CONTRACT.

See SALE OF GOODS.—
I. L. R. 45 Calc. 28

See SALE OF GOODS.
I. L. R. 42 Bom. 16

——— **nature of**—

See CONTRACT TO PURCHASE AND SHIP GOODS . . **I. L. R. 41 Mad. 1060**

——— *Addition of C. I. to C. I. F. in indent form—Bill of Exchange presented along with shipping documents and accepted by the merchant in India—Goods shipped on an alien ship—War between the Governments of the shipper and the shipmaster—The alien ship seized as a prize—Bill not paid at maturity, the acceptor not receiving goods—Release of the alien ship and delivery of the goods to the acceptor—Acceptor refusing to pay interest and notarial charges held liable to pay the same*

C. I. F. CONTRACT—*concld.*

—Bill of Exchange presented without shipping documents after the outbreak of war—Shipping documents becoming void after the outbreak of war—Consequent failure of consideration for the acceptance of the bill —Acceptance conditional—Non-liability of the acceptor to pay the principal amount of the bill, interes and notarial charges—The Indian Contract Act (IX of 1872) s. 56—The Negotiable Instruments Act (XXVI of 1881), s. 43. The plaintiffs were merchants doing business at Glasgow. The defendants, merchants in Bombay, ordered through the plaintiff's agent in Bombay, fifty cases of aluminium circles to be delivered at Madras on C. I. F. C. I. terms. The first shipment was to be of fourteen cases and the remaining ones of twelve cases each. The first consignment of fourteen cases was in due course received and paid for by the defendants. The second and third consignments of twelve cases each were shipped from a German port on the 16th and 25th July 1914, respectively, on two German vessels S.S. "Barenfels" and S.S. "Kybfels" Hansa Line. The shipping documents in respect of the "Barenfels" goods were duly delivered to the defendants along with the bill of exchange which the defendants accepted on 31st July 1914. On the 9th October 1914, the plaintiffs drew another bill of exchange in respect of the "Kybfels" goods which the defendants accepted on the 10th November 1914. The shipping documents for the said goods were not however received by the defendants at the time of the acceptance of the bill, but were tendered by the plaintiffs sometime after the filing of the suit. The two bills became payable on the 2nd October 1914 and 12th January 1915, respectively, but were not met by the defendants by payment. War being declared between Great Britain and Germany, S.S. "Barenfels" was in August 1914 seized on the voyage as a prize and on her release by the Prize Court allowed to proceed to Madras where she unloaded her cargo on 8th June 1915, when the defendants obtained possession of their goods on payment of the principal amount due under the first bill, but not the interest from the date of maturity to the date of payment. The plaintiffs sued on 2nd February 1915 to recover from the defendants (i) the interest due on the first bill from the date of maturity to the date of payment together with notarial charges, and (ii) the amount due on the second bill with interest. *Held,* (i) that under the first bill inasmuch as the defendants obtained all that they were entitled to obtain under the C. I. F. contract when the bill was presented to them for acceptance, that is to say, good shipping documents, the risk after the acceptance was entirely their own and that having refused payment on maturity they were liable to pay over-due interest after that date and the notarial charges incurred by the plaintiffs; (ii) that under the second bill inasmuch as the bill of lading had become a void contract before it was tendered to the defendants, on the 10th November 1914, there was at that time a failure of consideration for the acceptance of the bill and they were not bound to pay at maturity. *Arnhold Kerberg & Co.* v. *Blythe, Green, Jourdain & Co.; Theodor Schneider & Co.* v. *Burgett & Newsam, [1915] 2 K. B. 379,* followed. It is an accepted principle of the maritime law that all contracts of affreightment are put an end to by the outbreak of hostilities between the Governments of the shipper and the shipmaster. *Esposito v. Bowden, 7 El. & Bl. 763,* followed. MARSHAL & Co. *v.* NAGIN CHAND FULCHAND (1916). **I. L. R. 42 Bom. 473**

CALCUTTA IMPROVEMENT ACT (BENG. V OF 1911).

See RECOUPMENT.

I. L. R. 45 Calc. 343

——— **ss. 70, 71(*a*), (*c*), 77—**

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 585

CALCUTTA IMPROVEMENT TRIBUNAL.

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 585

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 3 (*30*), 37, 47, and Sch. IV, rr. 3, 8 (*1*)—**

See MUNICIPAL ELECTION.

I. L. R. 45 Calc. 950

——— **s. 357 (2)—**

See RECOUPMENT.

I. L. R. 45 Calc. 343

——— **s. 495A**—*Sale of adulterated ghee—Proper nature of enquiry in Court as to quality of subject matter of prosecution—Reliance on text-books without expert evidence—Evidence Act (I of 1872), ss. 57, 60.* The accused was prosecuted and convicted under s. 495A (1) of the Calcutta Municipal Act for selling adulterated *ghee.* The Assistant Analyst to the Corporation applied certain processes of analysis to the sample of *ghee* in question and obtained certain results from which he made the deduction thatt he *ghee* had been adulterated with certain percentages of foreign fat. No other expert witness was examined on either side and the defence contended that according to the standard works on the subject no such deduction could be made. Some of these works were put to the analyst in cross-examination by the defence. The Magistrate allowed the defence to rely on this evidence, dealt with it as being in evidence in the judgment and put exhibit marks on some of it. The Rule against the conviction was heard before Chitty and Smither, *JJ.*, both of whom agreed that the conviction could not stand but Chitty, *J.*, was for a retrial on the ground that there was no satisfactory investigation and Smither, J., held otherwise. *Held,* (on a reference under s. 429, Criminal Procedure Code). *Per* WOODROFFE *J.*, that in a case referred under s. 429, Criminal Procedure Code, a third Judge would not differ upon a point on which both the referring Judges were agreed unless there were strong grounds for doing so. That it could not be said that the Magistrate was wrong in making use of the text-books but the use of scientific treatises may lead to error if either those who so use them are themselves not experts in the matter dealt with or are not assisted by experts to whom passages relied upon may be put. That in the circumstances of the present case it would not be safe to rely on the books alone without the aid of an expert and there should be a retrial. *Per* CHITTY *J.* The procedure adopted by the Magistrate was incorrect if it were intended thereby to make these books and all their contents evidence in the case. The use of such books by the Court was regulated by ss. 57 and 60 of the Evidence Act. Books of reference may be used by the Court on matters (*inter alia*) of science to aid it in coming to a right understanding of and conclusion upon the evidence given, while treatise may be referred to in order to ascertain the opinions of

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concld.*

——— **s. 495A**—*concld.*

experts who cannot be called and the grounds on which such opinions are held. Courts should be very careful to avoid introducing into the case extraneous facts culled from text-books and also to refrain from being a decision on opinions the precise applicability of which to the subject-matter of the prosecution it was impossible to gauge. The books may be usefully referred to in order to comprehend and appraise correctly the evidence of the expert who has made the analysis and has given his opinion on oath as to the result of such analysis, but it would be dangerous to base the decision of the Court solely on the evidence of books whether for a conviction or an acquittal. *Per* SMITHER, *J.* That the Magistrate was right under s. 60 of the Evidence Act to admit the evidence of the text-books. It is important that in a criminal case, the prosecution should understand that it must put in all its evidence, and a retrial should not be ordered to enable it to fill up gaps in its evidence. GRANADE VENKATA RATNAM *v.* THE CORPORATION OF CALCUTTA (1913).
22 C. W. N. 745

——— **s. 557** (*d*)—*Municipality, if may acquire different portion of a holding by separate proceeding and thus evade the presumption of the section.* A holding within the Calcutta Municipality which was the subject of a single assessment, having been partitioned amongst its owners, the owner of one of the partitioned shares applied for separate assessment of his share, but that application was refused and the Municipality then proceeded to acquire the portions under the Land Acquisition Act by two separate proceedings. *Held*, that there was no legal bar to the Municipality proceeding in this manner and thereby depriving the owners of the several shares of the benefit of s. 557 (*d*) of the Calcutta Municipal Act. SHAM LAL DAS *v.* SECRETARY OF STATE FOR INDIA (1918) . . . . **22 C. W. N. 538**

CALCUTTA POLICE ACT (BENG. IV OF 1866).

——— **s. 54**—

See AUTREFOIS ACQUIT.
I. L. R. 45 Calc. 727

——— **s. 54A**— *Possession of property suspected to be stolen.* The preliminary condition which must be fulfilled before effect can be given to s. 54 (*a*) is that there must be reason to believe that the property found in the accused's possession was stolen property. In the present case the High Court acquitted the accused on the ground that the reasons given by the Magistrate were not sufficient. SUKHU KALWAR *v.* KING-EMPEROR (1918) . . . **22 C. W. N. 936**

——— **s. 66, sub-s.** (*4*) (*a*)—*Calcutta Municipal Bye-law* (*2*) *framed under sub-s. 18, s. 559 of the Calcutta Municipal Act* (*Beng. III, of 1899*)—*Obstruction of footpath.* The petitioner was granted a a license under Bye-law (2) framed under sub-s. 18, s. 559 of the Calcutta Municipal Act authorising him to make an enclosure in a portion of a particular street for depositing mortar, bricks, etc., during the building of certain premises on that street. The license was granted on condition that the portion of the street to be occupied must be fenced off with a temporary fence but the petitioner without putting up any such fence deposited some bricks on the footpath and was convicted under s. 66 of the Calcutta Police Act. *Held*, that the petitioner committed a breach of the bye-law under which his license was granted but his offence also fell under sub-s. 4(*a*), s. 66 of the Police Act, and his conviction under that section was proper. *Quœre*: Whether sub-s. 4 (*a*) introduced into s. 66 of the Police Act by the amending Act of 1910 (Bengal Act III), repealed the provisions regarding the regulation of obstructions in the Calcutta Municipal Act. BROOKE *v.* KING-EMPEROR (1917).
22 C. W. N. 455

CALCUTTA POLICE ACT (BENG. IV OF 1866)—*concld.*

——— **s. 66**—*concld.*

CALLS.

See COMPANY . **I. L. R. 42 Bom. 159**
See COMPANY . **I. L. R. 42 Bom. 264**

CANCELLATION.

——— **of sale-deed**—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 91 . **I. L. R. 42 Bom. 638**

CANCELLATION OF REGISTRATION.

See DESIGN . **I. L. R. 45 Calc. 606**

CAPTURE OF VESSEL.

See SALE OF GOODS.
I. L. R. 45 Calc. 28

CARGO.

——— **release of**—

See SALE OF GOODS.
I. L. R. 45 Calc. 28

CASTE PROPERTY.

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

CAUSE OF ACTION.

See MISJOINDER.
I. L. R. 45 Calc. 111

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111, CL. (*g*).
I. L. R. 42 Bom. 195

——— **survival of**—

See PARTIES.
I. L. R. 45 Calc. 862

CENTRAL PROVINCES TENANCY ACT (XI OF 1898).

——— **s. 45, sub-ss.** (*1*), (*6*)—*Sir land*—*Mortgage before Act*—*Conciliation award after Act*—*Mortgagor's occupancy right.* The Central Provinces Tenancy Act (XI of 1898), as amended by Act XXI of 1899, provides: "S. 45. (*1*) Notwithstanding any agreement to the contrary . . . a proprietor who, after the commencement of this Act, temporarily or permanently loses (whether under decree or order of a Civil Court or a Revenue Officer or otherwise) or transfers his rights to occupy *sir* land as a proprietor, shall at the date of such loss or transfer become an occupancy tenant of that *sir* land . . . (*6*) Nothing in this section shall affect a document duly registered before the commencement of this Act; and, on any surrender or transfer such as is described in sub-s. (*1*) being made, decreed or ordered in pursuance of such a document, the rights of the parties to occupy the *sir* land shall accrue as if this Act had not been passed. Explanation:—For the purposes of this section a transfer includes a mortgage

CENTRAL PROVINCES TENANCY ACT (XI OF 1898)—*concld.*

———— **s. 45**—*concld.*

and a base." In July, 1901, a foreclosure decree absolute was made under two registered mortgages, made in 1881 and 1884, of fifteen villages including *sir* lands. Upon appeal, the decree was set aside on terms and the matter referred by agreement to a Conciliation Board, which awarded that certain payments should be made by the mortgagors, and that in default seven of the villages should be foreclosed. The mortgagors having made default, a foreclosure decree absolute was made in 1910 in respect of the seven villages. The mortgagees claimed that under the decree they were entitled to actual possession of the *sir* lands. *Held*, that the conciliation award of 1905 was, for the purposes of the case, a fresh origin of rights between the parties, that s. 45, sub-s. (*6*), consequently did not apply, and that under s. 45, sub-s. (*1*) the mortgagors had occupancy rights in the *sir* lands of the seven villages. NARAYAN GANESH GHATATE *v.* BALIRAM (1918) . . **L. R. 45 I. A. 179.**

CERTIFICATE OF SUCCESSION.

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS. 7 AND 9.
I. L. R. 40 All. 81

CHAIRMAN.

———— **decision of—**

See MUNICIPAL ELECTION.
I. L. R. 45 Calc. 950

CHAR LANDS.

See LAND TENURE IN BENGAL.
L. R. 45 I. A. 190

CHARITABLE TRUST.

———— **hundi by trustee—**

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), SS. 26, 27, 28.
I. L. R. 41 Mad. 815

CHAUKIDARI CHAKARAN LANDS.

See LIMITATION. **L. R. 45 I. A. 162**

1. ———— *Included in revenue-paying estate—Resumption of, and transfer to landlord—Village Chaukidari Act (Beng. VI of 1870)—Sale of parent estate for default of payment of Government revenue—Revenue Sale Law (Act XI of 1859)—Title of purchaser.* Where chaukidari chakran lands resumed by Government under the provisions of the Village Chaukidari Act, 1870, were transferred in 1900 to A. in consequence of whose default in paying Government revenue, the parent estate was sold in 1907 and purchased by B, and where B sued to recover possession of the same. *Held*, that the purchaser at the revenue sale acquired no title to the chaukidari chakaran lands which were never put up to sale for realization of the arrears due from the remainder of the estate. *Ranjit Singh* v. *Kali Dasi Debi, I. L. R. 44 Calc. 841; 21 C. W. N. 609*, followed. *Kazi Newaz Khoda* v. *Ram Jadu Dey, I. L. R. 34 Calc. 109; 11 C. W. N. 201, Harreck Chand Babu* v. *Charu Chandra Sinha, 13 C. L. J. 102; 15 C. W. N. 5, Rakhal Das Mukerji* v. *Madhab Chandra Sinha, 13 C. L. J. 109*, referred to. *Kasim Sheikh* v. *Prasanna Kumar Mukerjee, I. L. R. 33 Calc. 596; 10 C. W. N. 598*, dissented from. BROJENDRA LALL DAS *v.* DEB NARAIN TEWARI (1917).
I. L. R. 45 Calc. 765

CHAUKIDARI CHAKARAN LANDS—*concld.*

2. ———— *Resumption.—Putni lease—Transfer to landlord—Suit for recovery of possession with mesne profits—Village Chaukidari Act (Beng. VI of 1870), s. 51.* Where A obtained a putni of two villages from Z, paid a bonus and the annual rent was fixed in perpetuity, and where within the lands comprised in the putni were some chaukidari chakaran lands which were subsequently resumed by Government and transferred to Z, who settled the same with tenants, and where A, the putnidar, instituted a suit for declaration of title and recovery, of possession with mesne profits:—*Held*, that, on equitable grounds, the putnidar and the zemindar must be placed in the position they would have occupied if the chaukidari chakaran lands had been resumed before the putni was created; the assets of those lands would then have been taken into account in settling the amount of putni rent which would have represented the assessment due to the State, as also a fair share of the profits. *Held*, also, that mesne profits were to be calculated on the basis of the rent payable by the tenants to the zemindar and not on that of the actual value of the land produce. *Ranjit Singh* v. *Kali Dasi Debi, 21 C. W. N. 609, Kazi Newaz Khoda* v. *Ram Jadu Dey, I. L. R. 34 Calc. 109, Rajendra Nath Mukherjee* v. *Hira Lal Mukherjee, 14 C. W. N. 995, Gopendra Chandra Mitter* v. *Tara Prasanna Mukherjee, 14 C. W. N. 1049, Harak Chand Babu* v. *Charu Chandra Singha, 15 C. W. N. 5*, referred to. MEHDI HOSSEIN *v.* UMESH CHANDRA MOOKERJEE (1917).
I. L. R. 45 Calc. 685

3. ———— *Effect of transfer—Village Chaukidari Act (Beng. VI of 1870), s. 51.* Where certain chaudidari chakaran lands forming part of a revenue-paying estate, being abandoned by the chaukidars, were appropriated by the zemindar who settled the same with the defendants as tenants, and thereafter the lands were resumed under the provisions of the Village Chaukidari Act, 1870, and subsequently transferred to the zemindar who granted an under-tenure to the plaintiff. *Held*, that the plaintiff could not contend that the defendants who were brought on the land by his grantor were trespassers and the plaintiff's suit in ejectment must fail. *Ranjit Singh Bahadur* v. *Kali Dasi Debi, 21 C. W. N. 609*, referred to. SHIB CHANDRA BANERJEE *v.* SURENDRA CHANDRA MANDAL (1917) . . **I. L. R. 45 Calc. 515**

4. ———— *Putni lease—Clause reserving power of zemindar to appoint and dismiss chowkidars, effect of.* A clause in a *putni* lease which reserves to or confers on the zemindar the right to appoint and dismiss chowkidars has not the effect of reserving to the Zemindar and excluding from the *putni* the *chowkidari chakran* land. NAFAR CHANDRA CHANDRA *v.* BEJOY CHAND MAHTAP (1917) . . . **22. C. W. N. 487**

CHIEF PRESIDENCY MAGISTRATE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 514.
I. L. R. 42 Bom. 400

CHOTA-NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876).

———— *Land outside Chota-Nagpur—Mortgage—Power of manager—Money paid under pressure of legal proceedings—Voluntary payment—Bengal Regulation VIII of 1819.* The Chota-Nagpur Encumbered Estates Act (VI of

CHOTA-NAGPUR ENCUMBERED ESTATES ACT (VI OF 1876)—*concld.*

1876) does not apply to immovable property outside Chota-Nagpur; a manager appointed under that Act has no power to reduce the rate of interest provided by a mortgage of land not situated within Chota Nagpur. *Bhicha Ram Sahu* v. *Bishambhar Nath Sahi, 16 C. L. J. 527*, approved. Having regard to the nature of the procedure provided by s. 14 of the Putni Regulation (Bengal Regulation VIII of 1819), a payment of rent by a patnidar to his zamindar upon receipt of notice under that section that the tenure would be sold to realize the rent due does not fall within the rule that money paid under pressure of legal proceedings is irrecoverable. RAJA of PACHETE *v.* KUMUD NATH CHATTERJEE (1918).

L. R. 45 I. A. 103

CHRISTIAN MARRIAGE ACT (XV OF 1872).

——— **ss. 3, 68**—"*Persons professing the Christian religion*"—*Marriage between two bhangis celebrated according to caste rites by two "Christians."* One Maha Ram, whose father was a Christian, but who himself was found not to be a Christian, within the meaning of s. 3 of the Indian Christian Marriage Act, 1872, although he had been baptized when an infant and used to attend a Christian school, was married to a *bhangi* girl according to the rites of the *bhangi* caste. This marriage was conducted by two persons, Bechhan and Mangli, who, although they were apparently Christians within the meaning of the Act, officiated as "*mans*," or priests of the *bhangi* caste. All these persons were convicted, Bechhan and Mangli of the substantive offence defined in s. 68 of the Indian Christian Marriage Act, 1872, and Maha Ram of abetment of that offence. *Held*, that the conviction could not stand, both because Maha Ram, on the facts appearing in evidence, could not be held to be a Christian within the meaning of s. 3 of the Indian Christian Marriage Act, 1872, and also, as *held* by WALSH, *J.*, because the Act in question deals with Christian marriages and Christian marriages only. *Queen-Empress* v. *Paul, I. L. R. 20 Mad. 12, In re Kolandairelu, I. L. R. 40 Mad. 1030* and *Muthusami Mudaliar* v. *Masilamani, I. L. R. 33 Mad. 342*, discussed by WALSH, J. EMPEROR *v.* MAHA RAM (1918) . . **I. L. R. 40 All. 393**

CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898).

——— **s. 48** (11)—*The Land Acquisition Act (I of 1894), ss. 11, 12, 18, 31—Award of the Special Collector—Notice of the award and of payment to be made thereunder—Apportionment disputed by a claimant not appearing before the Special Collector and after payment made to other claimants—Reference to the Tribunal of Appeal—Jurisdiction of the Tribunal of Appeal to hear the reference but not to order the refund of money—Remedy of the claimant to recover the refund by a suit—Inherent jurisdiction of the High Court—Estoppel.* The plaintiff was the owner of a large piece of land situated within the island of Bombay and let out on a lease for a term of ninety-nine years to A. M. and M. I. In November 1914, the Trustees for the Improvement of the City of Bombay acquired a portion of the land under the City of Bombay Improvement Trust Act. At the time of the acquisition, the essee's interest in the land had become vested in the first defendant who had mortgaged his interests

CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898)—*contd.*

——— **s. 48**—*contd.*

to the second defendant company who in their turn created a sub-mortgage or their interests in favour of R. P. M. The plaintiff did not take any part in the enquiry before the Special Collector. The amount of compensation was amicably settled between the Improvement Trust and the first defendant for Rs. 85,000 which was apportioned as follows: Rs. 43,116 to the second defendant in part payment of their mortgage claim against the first defendant, Rs. 7,967 to R. P. M. in full satisfaction of his claim as equitable sub-mortgagee of second defendant, Rs. 2,804 to the plaintiff, Rs. 30,000 to the mortgagee of the plaintiff, and Rs. 1,113 to the Municipal Commissioner, Bombay. The Special Collector gave notice of his award on 7th November 1914 to the parties concerned intimating that compensation moneys would be paid on the 11th November 1914. The plaintiff received this notice on 11th November 1914. The next day after payment was made to the second defendant and R. P. M. in pursuance of the notice, the Special Collector received a letter from the plaintiff who was dissatisfied with the award asking for a reference to the Tribunal of Appeal. The plaintiff did not dispute the total amount of compensation awarded, but disputed the apportionment made by the Special Collector as between himself and the first defendant. On a reference being made under s. 18 of the Land Acquisition Act, the Tribunal of Appeal varied the award of the Special Collector with the result that the plaintiff was declared to be entitled to a sum of Rs. 2,960-10-0 out of the moneys received by the second defendant. The Tribunal of Appeal, however, held that it had no jurisdiction to make an order for the refund of the moneys paid to the second defendant whereupon the plaintiff brought the present suit against the defendants Nos. 1 and 2. The defendants contended (i) that the plaintiff was estopped by his conduct from questioning the payment of compensation moneys, (ii) that the Special Collector had no jurisdiction to make the reference under s. 18 of the Land Acquisition Act after payment was made in accordance with the award before the raising of any objection and when there were no moneys which could be deposited with the Tribunal of Appeal as required by s. 31 (*2*) of the Land Acquisition Act, (iii) that the Tribunal of Appeal had no jurisdiction to entertain the reference, and (iv) the suit was not maintainable as the plaintiff had not appealed from the order of the Tribunal of Appeal as provided by s. 48 (*11*) of Act IV of 1898. *Held*, (i) that the plaintiff by not adducing any evidence before the Collector and by his mortgagee accepting the sum of Rs. 30,000 had not expressly or by implication accepted the award, as after getting notice of the award he duly intimated to the Collector that he did not accept the same; (ii) that deposit of the amount in Court was not a condition precedent to the making of the reference by the Collector and that the Tribunal of Appeal had jurisdiction to entertain the reference; (iii) that the suit was not premature because the plaintiff did not avail himself of the right of appeal given to him by s. 48 (10) of Act IV of 1898; (iv) that the question being as to how the plaintiff was to receive the amount which he was declared to be entitled to by the Tribunal of Appeal, his remedy was by a suit in the civil Court had inherent jurisdiction to entertain such suit. *Gobindarance*

CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898)—*concld.*

——— **s. 48**—*concld.*

Dassee v. *Brinda Ranee Dasee, I. L. R. 35 Calc. 1014, In re Land Acquisition Act, I. L. R. 30 Bom. 275,* and *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khan, 6 Moo. I. A. 134,* referred to. GANGADAS MULJI *v.* HAJI ALI MAHOMED JALAL (1916).
I. L. R. 42 Bom. 54

CIVIL COURT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 54. **I. L. R. 42 Bom. 689**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92. **I. L. R. 42 Bom. 742**

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 85. **I. L. R. 42 Bom. 49**

See PENSIONS ACT (XXIII OF 1871), S. 4. **I. L. R. 42 Bom 257**

CIVIL AND CRIMINAL CONTEMPT.

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

CIVIL AND REVENUE COURTS.

See AGRA TENANCY ACT (II OF 1901), SS. 95, 177 (*f*). **I. L. R. 40 All. 177**

See AGRA TENANCY ACT (II OF 1901), SS. 175, 177, 193. **I. L. R. 40 All. 219**

1. ——— *Jurisdiction —Tenant taking a partner in cultivation on agreement to pay half the tenant's rent to him—Suit on such agreement by tenant against partner—Small Cause Court.* Plaintiff, being the tenant of certain plots of agricultural land on a rental of Rs. 60 a year, took the defendant into partnership on the terms that they were to cultivate jointly and divide the produce equally, and that defendant was to pay half the rent annually to the plaintiff. *Held,* that a suit by plaintiff to recover from defendant the share of the rent payable by him was a suit for damages for breach of contract cognizable by a Court of Small Causes, and not a suit for rent within the meaning of the Agra Tenancy, Act, 1901. RAM NATH *v.* SEKHDAR SINGH (1917).
I. L. R. 40 All. 51

2. ——— *Jurisdiction —Suit by zamindar for damages in respect of the felling of trees on agricultural land by tenants—Agra Tenancy Act (II of 1901), ss. 57, 65, 167. Held,* that a suit for damages for the alleged wrongful felling by the tenant of trees on an agricultural holding is not a suit which is excluded from the jurisdiction of a Civil Court. *Lachman Das* v, *Mohan Singh, 9 A. L. J. 672,* referred to. MANSUKH RAM *v.* BIRJRAJ SARAN SINGH (1918).
I. L. R. 40 All. 646

CIVIL COURTS ACT (XII OF 1887).

——— **s. 21, Cl. (*1*)**—

See JURISDICTION.
I. L. R. 45 Calc. 926

CIVIL PROCEDURE CODE (ACT XIV OF 1882.)

——— **s. 13**—

See RES JUDICATA.
I. L. R. 45 Calc. 442

——— **s. 244**—

See MORTGAGE. **I. L. R. 41 Mad. 403**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— **s. 315**—*Execution of decree—Sale in execution—Auction-purchaser deprived of property purchased owing to failure of judgment-debtor's title —Suit to recover purchase money.* Where property of a judgment-debtor had been sold twice over in execution of decrees against him and purchased twice by different purchasers it was *held* that the second purchaser took no title by his purchase, inasmuch as at the time of sale the judgment-debtor's title was extinct, and that he was entitled to recover the purchase money which he had paid, and to follow it into the hands of other creditors of the judgment-debtor amongst whom it had been rateably distributed. GIRDHAR DAS *v.* SIDHESHWARI PRASAD NARAIN SINGH (1918).
I. L. R. 40 All. 411

——— **ss. 366, 368, 371**—

See LIMITATIONS . **I. L. R. 45 Calc. 94**

——— **ss. 503, 505**—

See LEASE . . **I. L. R. 45 Calc. 940**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— **ss. 2 (*11*), 53**—*Legal representative—Surviving co-parceners in a joint Hindu family are not legal representatives of deceased co-parceners—Decree for injunction—De ree cannot be enforced against co-parceners who were not parties to the suit.* The plaintiff obtained decree for injunction against two defendants, who were members of a joint Hindu family, with three other co-parceners. After the death of both defendants, the plaintiff sought to execute the decree against the three surviving co-parceners: *Held,* dismissing the application that the surviving co-parceners were not bound by the decree for on no construction of the term "legal representative" could members of a joint Hindu family be brought within its definition as contained in s. 2 (*11*) of the Civil Procedure Code of 1908. *Per* BEAMAN, *J.* "S. 53 (of the Civil Procedure Code) has been enacted, in my opinion, expressly to enforce one recognised rule of the Hindu law, namely, that members of a joint Hindu family may not escape the payment out of the joint family property of any debt incurred and decree against their father before his death provided that such debt is not tainted by immorality. The object of the section is limitative and is intended to give effect to a well-known rule of the Hindu law referable to a religious rather than legal sanction which might otherwise have been rendered nugatory by the definition of 'legal representative.'" CHUNILAL HARILAL *v.* BAI MANI (1918) . . . **I. L. R. 42 Bom. 504**

——— **s. 11**—

See HINDU LAW—ADOPTION.
I. L. R. 40 All. 593

See HINDU LAW—JOINT FAMILY.
I. L. R. 42 Bom. 69

——— **s. 11, Expl. V**—*Mortgage—Suit for sale—Person claiming paramount title impleaded—Decree in favour of mortgagee plaintiff—Suit by paramount owner for declaration of title—Res judicata.* In a suit brought by a mortgage to enforce his mortgage, a person claiming a title paramount to the mortgagor and the mortgagee is not a necessary party, and the question of the paramount title cannot be litigated in such a suit. *Joti Prasad* v. *Aziz Khan, I. L. R. 31 All. 11,* and *Jaggeshar*

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 11—*contd.*

Dutt v. *Bhuban Mohan Mitra, I. L. R. 33 Calc. 425,* referred to. Two suits for sale on separate mortgages of the same property were filed, and in each the mortgagees impleaded a third party as a subsequent mortgagee of a portion of the property in suit. The party so impleaded was in reality the owner of a considerable portion of the property comprised in the mortgages sued upon, though he was not impleaded in that capacity. In the first suit the puisne mortgagee did not appear. In the second he attempted to set up his paramount, title, but was not allowed to do so. The mortgagors likewise attempted to set up the paramount title of the person impleaded as puisne mortgagee, and in their case also the defence was ruled out. In the result, decrees were passed in favour of the plaintiff. The pusine mortgagee then brought a suit for a declaration of his title to part of the mortgaged property. *Held,* that the suit was not barred by anything which had happened in the course of the previous litigation. *Girija Kanta Chakrabutty* v. *Mohim Chandra Acharjya, 35 Indian Cases 294,* referred to. GOBARDHAN *v.* MUNNA LAL (1918).

I. L. R. 40 All. 584

——— s. 11, Expl. V ; O. XX, r. 12—*Suit for possession and mesne profits—Decree silent regarding future mesne profits—Fresh suit for such profits not barred.* The plaintiff claimed possession of immovable property and mesne profits to the date of suit ; also mesne profits *pendente lite* and subsequent to decree. The Court gave a decree for mesne profits to the date of suit, but the decree was silent as to mesne profits *pendente lite* or subsequent to decree. *Held,* on suit by the plaintiff for further mesne profits to the date of his obtaining possession, that there was nothing in the present Code of Civil Procedure of 1908, any more than in the former Code of 1882, to bar such a suit. *Ram Dayal* v. *Madan Mohan Lal, I. L. R. 21 All. 425,* followed. *Doraiswami Ayyar v. T. Subramania Ayyar, I. L. R. 41 Mad. 188,* referred to. MUHAMMAD ISHAQ KHAN *v.* MUHAMMAD RUSTAM ALI KHAN (1918) . . . **I. L. R. 40 All. 292**

——— s. 11, Expl. V ; s. 47, and O. XX, r. 12—

See RES JUDICATA.

I. L. R. 41 Mad. 188

——— ss. 11, 47— *First suit for redemption—decree for redemption not executed—Second suit for redemption—Bar of res judicata—Remedy by execution and not by fresh suit.* On the 8th April 1899, a mortgagor obtained a decree for redemption of a mortgage of 1859, under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. This decree was not executed. The property mortgaged continued to remain in the possession of the mortgagee. The mortgagor again mortgaged the property to the plaintiff on the 26th May 1899. In 1912, the plaintiff sued to enforce his mortgage against the original mortagor and mortgagee. The mortgagee contended that the decree of 1899 was a bar to the suit. *Held,* that the suit was barred by the decree of 1899, for if it was treated as a suit for redemption of the mortgage of 1859 it would be barred under s. 11 of the Civil Procedure Code (Act V of 1908), and if it was treated as based on the decree of 1899 taken along with the subsequent conduct of the parties in not executing the decree and in allowing the possession to remain with the mortgagee as before it would be barred uder s. 47 of the Code. BAPUJI RAMCHANDRA *v.* GUJA MALU (1917 . **I. L. R. 42 Bom. 246,**

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 11—*concld.*

——— s. 13 (*b*) **and** (*d*)—*Natural justice, meaning of the term—Wrong view as to legal liability or onus, whether renders foreign judgment one not given on the merits.* A wrong view as to the legal liability of a party or as to onus does not render a foreign judgment one not given on the merits within the meaning of s. 13 (*b*) of the Civil Procedure Code. The term 'natural justice,' in s. 13 (*d*) of the Code of Civil Procedure with reference to foreign judgments refers rather to the form of procedure than to the merits of the case. *Crawley* v. *Isaacs, 16 L. T. (N. S.) 529,* followed. *Liverpool Marine Credit Co.* v. *Hunter, L. R. 3 Ch. App. 479,* applied and followed. *Imrie* v. *Castrique, 8 C. B. (N. S.) 405 ; 141 E. R. 1222,* and *Scott* v. *Pilkington, 2 B. & S. 11 ; 121 E. R. 978,* referred to. RAMA SHENOI *v.* HALLAGNA (1917).

I. L. R. 41 Mad. 205

——— ss. 20 cl. (*c*)**, 21—***Cause of action.* The opposite party sued the petitioner Company in the Court at Feni upon two policies of life insurance issued by them to his deceased father. The assured sent proposal forms for the policies from some place in the Chittagong District to the head office of the Company at Calcutta where the policies were made out and despatched to the assured who subsequently died within the local limits of the Court of Feni in the District of Noakhali. The trial Court and on appeal the District Judge held that the death of the assured being a part of the plaintiff's cause of action and it having taken place within its local limits, the Court at Feni had jurisdiction. *Held,* that in the absence of anything to show that there had been a failure of justice, the trial cannot, in view of s. 21 of the Civil Procedure Code, be set aside as without jurisdiction. *Per* RICHARDSON, *J. (semble).* The Court at Feni had jurisdiction under s. 20, cl. (*c*) of the Code. BENGAL PROVIDENT AND INSURANCE CO. *v.* KAMINI KUMAR CHOUDHURY (1918).

22 C. W. N. 517

——— s. 24—*Provincial Small Cause Courts Act (IX of 1887), s. 35—Transfer of Small Cause Court suit—Appeal—Jurisdiction.* A Small Cause Court suit valued at Rs. 273 was pending in the Court of a Subordinate Judge who had Small Cause Court jurisdiction up to Rs. 500. The Subordinate Judge went on leave and was succeeded by an officer whose Small Cause Court jurisdiction was limited to Rs. 250. Subsequently by order of the District Judge, all Small Cause Court suits above Rs. 250 in value were transferred to the Court of a Munsif. *Held,* that, with reference to s. 24 of the Code of Civil Procedure, the suit so transferred must be deemed to have been tried by the Munsif as a Court of Small Causes, and from his decision no appeal lay. CHATURI SINGH *v.* MUSAMMAT RANIA (1918).

I. L. R. 40 All. 525

——— s. 36—

See GUARDIANS AND WARDS ACT (VIII. OF 1890), S. 34.

I. L. R. 41 Mad. 241

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 47—

1. ——— *Auction purchaser—Whether a representative of the judgment-debtor—Court-sale.* An auction-purchaser at a Court-sale is not a representative of the judgment-debtor within the meaning of s. 47 of the Civil Procedure Code, 1908. NARSINHBHAT *v.* BANDO KRISHNA (1918) . . . . **I. L. R. 42 Bom. 411**

2. ——— *Order accepting security proffered by decree-holder and delivering possession to him, if appealable—Interlocutory order.* Where in pursuance of an order of the Court directing that the decree-holder on furnishing security to the extent of Rs. 50,000 in immoveable property was to be at liberty to proceed with the execution, security was offered and accepted by the Court in spite of objection by the judgment-debtor, and an order was made directing delivery of possession to the decree-holder of the property forming the subject-matter of the decree. *Held,* that the order was not an interlocutory order and an appeal lay against it. RUDRA NARAIN JANA *v.* NABA KUMAR DAS (1918).
22 C. W. N. 657

——— s. 47, explanation—

3. ——— *Abandonment of case against defendant properly impleaded, whether dismissal against such defendant—Madras Proprietary Estates Village Service Act (II of 1894), s. 17—Madras Hereditary Village Offices Act (III of 1895), s. 5—Service inam lands—Issue of inam title-deed therefor on one date with notification under s. 17 of Madras Act II of 1894 enfranchising the lands at date subsequent to issue of deed—Mortgage of the lands in the interval, whether valid—Transfer of Property Act (IV of 1882), s. 43, whether applicable to illegal transfers. Held* by the Full Bench: Where a person has been properly impleaded as one of the defendants in a suit but the suit is dismissed as against him on account of the plaintiff's election to abandon his case so far as it affected that defendant, such a person is a "defendant against whom a suit has been dismissed" within s. 47, Civil Procedure Code. *Krishnappa* v. *Periasami, I. L. R. 40 Mad. 964,* distinguished. An alienation of village service inam lands in a proprietary estate made after the grant of an inam title-deed of enfranchisement but before the date of the notification contemplated by s. 17 of the Madras Act II of 1894 is invalid and inoperative on account of the prohibition contained in s. 5 of the Madras Act III of 1895. The alienation being a prohibited and illegal one on the date on which is was made, the subsequent removal of the prohibition by the notification of enfranchisement of the service inam land does not render the alienation valid; s. 43 of the Transfer of Property Act cannot be applied to make a transfer valid which on the date on which it was made was prohibited by a statute. *Narahari Sahu* v. *Korithan Naidu, 24 Mad. L. J. 462,* and *Sri Kakarlapudi Lakshminarayana Jagannada* v. *Sri Raja Kandukuri Balasurya Prasada Rao, 28 Mad. L. J. 650,* followed. *Angannayya* v. *Narasayya, 18 Mad. L. J. 241,* overruled. SANNAMMA *v.* RADHABHAYI (1917).
I. L. R. 41 Mad. 418

——— s. 47; O. XLI, r. 1—*Execution of decree—Limitation—Appeal—Copy of decree or final order necessary to the filing of an appeal.* On an objection taken by the judgment-debtor that the Code execution of a decree was barred under s. 48 of the of Civil Procedure, the Court, in disallowing the objection, wrote a judgment and also drew up a formal order, or decree, being the formal expression of the decision of the question. *Held,* that O. XLI, r. 1, of the Code applied, and no valid appeal could be filed against the decision of the Court below which was not accompanied by a copy of such formal order, or decree. *Khirode Sundari Devi* v. *Janendra Nath Pal Chaudhuri, 6 C. W. N. 283,* discussed. QASIM ALI KHAN *v.* BHAGWANTA KUNWAR (1917) . . . **I. L. R. 40 All. 12**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 47—*concld.*

——— s. 48—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 48.
I. L. R. 42 Bom. 367

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 181, 182.
I. L. R. 42 Bom. 309

——— *Execution of decree—Limitation—"Subsequent order"—Order by executing Court giving time for payment—Limitation Act (IX of 1908), s. 15.* The expression "subsequent order" in s. 48 (*b*) of the Code of Civil Procedure, means a subsequent order by the Court which made the decree and acting as that Court and not an order of a Court executing the decree. An order made by a Court executing a decree, allowing a judgment-debtor time to pay up the balance of the decretal money would not be subsequent order within the meaning of s. 48 and would not give a fresh period to the decree-holder to execute his decree. Nor is an order merely giving time for payment an order staying execution or an injunction, and the time so given can not be excluded in computing limitation against the decree-holder. JURAWAN PASI *v.* MAHABIR DHAR DUBE (1918) . . **I. L. R. 40 All. 198**

——— s. 54—*Execution of Decree—Partition made by Collector—Jurisdiction of Civil Court to reopen partition.* The Civil Court has no jurisdiction to reopen a partition made by the Collector under s. 54 of the Civil Procedure Code, 1908. BHIMANGAUDA *v.* HANMANT RUNGAPPA (1918).
I. L. R. 42 Bom. 689

——— s. 60 (*c*) **; O. XXI, r. 92**—*Execution of decree—Sale in execution—House of an agriculturist—Objection not taken at time of sale, but in answer to a suit for possession by the auction-purchaser—Estoppel. Held,* that a judgment-debtor, who could and ought to have raised objections to the sale of his property at the time of the sale, could not be permitted long after the sale had been confirmed to raise the same objections in answer to a suit by the auction-purchaser for possession of the property purchased by him. *Umed* v. *Jas Ram, I. L. R. 29 All. 612, Pandurang Balaji Bagave* v. *Krishnaji Govind Parab, I. L. R. 28 Bom. 125,* and *Dwarka Nath Pal* v. *Tarini Sankar Roy, I. L. R. 34 Calc. 199,* followed. LALA RAM *v.* THAKUR PRASAD (1918).
I. L. R. 40 All. 680

——— s. 60 (*g*)—*Grant of jagir whether of revenue or land—Grant whether absolute or for maintenance—Political pension.* A Government sanad purported to grant the "taluka" of a certain pargana, together with the lands cultivated or un-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 60**—*concld.*

cultivated, to one K for life as revenue-free jagir by way of maintenance and went on to say that after the death of K the said "ilaka" will continue to stand in the names of his children and grandchildren as a permanent zemindari assessed to a light amount of jama: *Held*, that the grant to K was of land rather than of revenue charged on the land and was not a political pension within s. 60 (*g*) of the Civil Procedure Code. The word "jagir" primarily points to occupancy, though it may be occupancy of an office such as that of collector of revenue. Where, however, a jagir held for life only is, as in this sanad, used in contradistinction to an ilaka held as a permanent zamindari, it is an almost necessary inference that the occupancy referred to is an occupancy of land. That though the grant to K was expressed to be for his maintenance, it was not, in the case of his descendants. That in the hands of the latter the subject-matter of the grant was liable to attachment in execution of a decree. SAKINA BAI *v.* KANIZ FATIMA BEGUM (1917) . . . . . **22 C. W. N. 577**

——— **s. 64, Expl.**—*Effect of—Attachment of land by one decree-holder—Application for rateable distribution by other decree-holders—Satisfaction of attaching decree-holder's decree by subsequent private alienation of the land attached—The other decree-holders cannot impeach the alienation.* Where a decree-holder attached land in execution of his decree and the other decree-holders applied for rateable distribution without attaching the land in execution of their decrees and subsequently the judgment-debtor alienated the land and paid off the attaching decree-holder. *Held* by the Full Bench, that the other decree-holders were not entitled to question the alienation under s. 64 of the Civil Procedure Code. *Mina Kumari Bibi* v. *Bijoy Singh Dudhuria, I. L. R. 44 Calc. 662*, relied on. Effect of Explanation to s. 64, Civil Procedure Code, considered. ANNAMALAI CHETTIAR *v.* PALAMALAI PILLAI (1917) . . **I. L. R. 41 Mad. 265**

——— **s. 70 ; O. XXI, r. 72**—*Bombay Civil Circulars, Chap. II, cl. 91, sub-cl. 16—Execution proceedings transferred to the Collector—Court's power to entertain application for leave to bid at Court-sale—Set-off cannot be allowed by Court.* When the execution of a decree is transferred to the Collector, the Court has no power to entertain an application by the decree-holder for leave to bid at the auction-sale; it should be made to the Collector under sub-c, 16 of Cl. 91 of the Manual of Bombay Civil Circulars. No set-off can be allowed either by the Collector or the Court. SHRINIWAS APPACHARYA *v.* JAGADEVAPPA (1918). **I. L. R. 42 Bom. 621**

——— **s. 80**—

See SUIT . . **I. L. R. 45 Calc. 934**

——— *Public Officer acting mala fide—Suit against Public Officer—Notice of suit, whether necessary—'Purporting to be done' in s. 80, meaning of.* A Public Officer is entitled to notice of suit under s. 80 of the Civil Procedure Code even if, in the discharge of his duty, he had acted *mala fide*. Meaning of 'purporting to be done' discussed. *Shahebzadee Shahunshah Begam* v. *Fergusson, I. L. R. 7 Calc. 499*, and *Muhammad Saddiq Ahmad* v. *Panna Lal, I. L. R. 26 All. 220*, not followed. *Jogendra Nath Roy Bahadur* v. *Price, I. L. R. 24 Calc. 584*, and *Jugol Kishore* v. *Jugal Kishore, I. L. R. 33 All. 540*, followed. KOTI REDDI *v.* SUBBIAH (1918). **I. L. R. 41 Mad. 792**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 80**—*concld.*

——— **s. 92**—*Suit by a Muktesar of a temple against superseded Muktesars—The superseded Muktesars also trustees of the endowment—Prayers for recovery of property belonging to the temple, mesne profits and for taking accounts of the management—Jurisdiction of Court to entertain suit—Religious Endowments Act (XX of 1863), s. 14.* The plaintiff, who claimed to be heir of the original donor and a newly appointed Muktesar of a temple, sued the defendants who were the trustees of the endowment and the superseded Muktesars of the temple, praying for possession of immoveable and moveable properties belonging to the temple, for mesne profits and for accounts. The trial Court being of opinion that the suit was governed neither by s. 92 of the Civil Procedure Code, nor by s. 15 of the Religious Endowments Act, decreed it on merits. The suit was, however, dismissed by the District Judge on the preliminary ground that the cognizance of the suit was barred by s. 92 of the Civil Procedure Code. The plaintiff having appealed. *Held*, that the suit clearly fell within the scope of s. 92 of the Civil Procedure Code, inasmuch as taking the plaint as a whole the suit was one for the removal of the defendants from their position as trustees, for the restoration of the trust property to the plaintiff as Muktesar, for taking accounts and for damages for their wrongful acts as trustees. *Held*, further, that the defendants were not in the position of strangers, for they were trustees and claimed as such to be entitled to hold the lands from generation to generation subject to the due fulfilment of the trust. *Per* MARTEN, J.—"There is much which is in common between the two sections (s. 92 of the Civil Procedure Code and s. 14 of the Religious Endowments Act) but s. 92 is substantially the wider and provides *inter alia* for settling a scheme which is a jurisdiction of a very wide and beneficial nature. I think, therefore, that a plaintiff may proceed for appropriate relief under either Act, and that the opening words in s. 92 (*2*) only mean that if he elects to proceed under the Religious Endowments Act, he is not to be prevented from so doing by s. 92 (*2*.) HANSRAJ LADDASHET *v.* ANANT PADMANABH (1918), **I. L. R. 42 Bom. 742**

——— **ss. 99, 100, 108**—

See JURISDICTION. **I. L. R. 45 Calc. 926**

——— **s. 100**—

See CONTRACT . **I. L. R. 42 Bom. 344**

——— *Custom or usage having the force of law—Extent of jurisdiction of High Court in second appeal in deciding custom or usage—Mirasidar in Chingleput district, right to thunduvaram by custom from Government ryots—Onus of proving custom on mirasidar—Civil Procedure Code, s. 103—Power of High Court to decide facts under—Admissions of a party, binding nature of, unless explained—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 13—Thunduvaram, dues within—Burden of proving abandonment of customary right—Non-exercise of right for a long time, effect o . Held*, by the Full Bench: The existence of a

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 100—*concld.*

custom or 'usage having the force of law' is a mixed question of fact and law. S. 100, Civil Procedure Code, precludes the High Court from interfering in second appeal with the findings arrived at by the lower Court of actual facts from which the existence of the custom has been inferred; the inference as to the existence and the decision as to the validity of the custom being matters of law, revisable by the High Court in second appeal. *Kakarla Abbayya* v. *Raja Venkata Papayya Rao, I. L. R. 29 Mad. 24*, overruled. *Kailas* v. *Padmakisor, 25 C. L. J. 613*, and *Pankajammal* v. *The Secretary of State for India, I. L. R. 40 Mad. 1108*, followed. *Palaniappa Chetty* v. *Sreemath Devasikamony Pandarasannadhi, I. L. R. 40 Mad. 709*, referred to. *Held*, further: (*a*) that in a suit by an *ekoboga mirasidar* in a village in the Chingleput district, for certain customary dues called *thunduvaram* from the non-mirasidar Government ryots in the village, the onus of proving the custom was on the mirasidar, (*b*) that on the facts found he had established the custom, (*c*) that express admissions of a party to a suit are strong evidence against him unless and until explained and (*d*) that the onus of proving discontinuance of the custom was on the ryot. *Per* SADASIVA AYYAR, J. The High Court can, under s. 103, Civil Procedure Code, decide in second appeal the genuineness or otherwise of the material documents in the case in the absence of a finding by the lower Appeallate Court *Held*, by the Division Bench (SADASIVA AYYAR and NAPIER, JJ.) Mirasi right is an interest in the village lands though not a proprietary interest therein. The *thunduvaram* payable to the mirasidar by a ryot according to custom is not in the nature of 'rent' but falls under 'dues' within art. 13 of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) and in a suit for such dues a second appeal lies to the High Court. KUMARAPPA REDDI *v.* MANAVALA GOUNDAN (1917).

I. L. R. 41 Mad. 374

——— s. 102—

See POSSESSORY SUIT.

I. L. R. 45 Calc. 519

——— s. 104; O. XXI, rr. 90, 92, O. XLIII, r. 1 (*j*)—*Execution of decree—Sale in execution—Application to set aside sale rejected—Appeal.* Under O. XXI, r. 90, of the Code of Civil Procedure, 1908, an application may be made to set aside a sale held in execution of a decree, upon the ground, amongst others, of fraud in the publication or conduct of the sale, and, if this application is refused under r. 92, an appeal lies under O. XLIII, r. 1, cl. (*j*); but no second appeal is allowed from the order of the Appellate Court. SHEO PRASAD SINGH *v.* PREMNA KUNWAR (1917).

I. L. R. 40 All. 122

——— s. 104 (*f*)—

See APPEAL . **I. L. R. 45 Calc. 502**

——— s. 109—*Decree or final order within the meaning of the section—Leave to appeal to Privy Council.* Where the High Court in appeal remanded a case and directed that defendants who had been sued in their individual capacity should be sued as executor as well and that one of the defendants should be sued as residuary legatee and heir, and on such amendment of the suit being made the questions between the parties

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 109—*concld.*

should be adjudicated upon. *Held, per* SANDERSON, C. J., that this was not a final order within the meaning of s. 109, Civil Procedure Code. *Per* WOODROFFE, J. That this was neither a final decree nor order within the meaning of the section. BIRENDRO NATH ROY *v.* NRIPENDRA NATH ROY (1917) . . . . . **22 C. W. N. 640**

——— s. 110; O. XLV, r. 5—*Leave to appeal to the Privy Council—Certificate—Second appeal—Substantial point of law—Dispute as to the value of property involved—Finding of the trial Judge acquiesced in—Finding cannot be re-opened for the purposes of a certificate.* In an application for leave to appeal to the Judicial Committee of the Privy Council in a second appeal, the applicant contended that the appeal involved a substantial point of law and asked for a remand to the lower Court for enquiry as to the amount or value of the subject-matter under O. XLV, r. 5 of the Civil Procedure Code, 1908, on the ground that a dispute between the parties had arisen on the point. The trial Judge had, on enquiry, found that the value of the property was Rs. 4,000 and this finding was acquiesced in by the applicant till the disposal of the second appeal. *Held*, that the applicant was concluded by the result of the enquiry already made and he could not be allowed to re-open a finding as to the value of the property in order to provide him with the means of taking the litigation to the Privy Council. ANANT NARAYAN *v.* RAMCHANDRA GANGADHAR (1918).

I. L. R. 42 Bom. 609

——— s. 114—

See DECREE . **I. L. R. 40 All. 579**

——— s. 115—

See CIVIL PROCEDURE CODE, O. XXIII.

I. L. R. 41 Mad. 701

1 ——— *Nazir's embezzlement—District Judge ordering recovery by attachment under Bom. Act XII of 1850, s. 4—Jurisdiction of the High Court to revise the order.* Under s. 115 of the Civil Procedure Code, 1908, the High Court has no jurisdiction to revise an order made by a District Judge acting under s. 4 of the Bom. Act XII of 1850 as it is an order made by him as a person at the head of an office and not an order made by a Court in any way subordinate to the High Court. COOPER, *In re* (1917).

I. L. R. 42 Bom. 119

2. ——— *Revision—Jurisdiction of High Court—Question of law or fact bearing on jurisdiction of Court.* When a question of jurisdiction is involved, the High Court is competent to revise a conclusion of law or fact which bears on such question. *Balakrishna Udayar* v. *Vasudeva Ayyar, I. L. R. 40 Mad. 793*, explained. BIHARI LAL *v.* BALDEO NARAIN (1918).

I. L. R. 40 All. 674

——— s. 115; O. XXXVIII, rr. 9, 11—

See ATTACHMENT BEFORE JUDGMENT.

I. L. R. 45 Calc. 780

——— ss. 115, 151; O. XLI, r. 23—*Remand of case by lower Appellate Court—Refund of Court-fees paid on memorandum of appeal—Court-fees Act (VII of 1870), s. 13—Refusal to pass the order—Application to High Court.* The lower Appellate

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 115**—*concld.*

Court remanded a case under O. XLI, r. 23 of the Civil Procedure Code, 1908, but declined to order refund of Court-fees paid on the memorandum of appeal. The appellant having applied to the High Court against the order. *Held*, that the application was not within the scope or intention of s. 151 of the Civil Procedure Code, 1908. *Held*, further, that the application must be allowed under s. 115 of the Code, as the lower Appellate Court, in refusing to pass the order had acted with illegality or with material irregularity. Per BEAMAN, *J.* I think it is very clear that that s. (151) is intended to empower Courts to deal with their own decrees and orders and was not intended to give authority to superior Courts by way of conferring supplemental jurisdiction to that conferred by s. 115." BHAUSING *v.* CHAGANIRAM HURCHAND (1918) . . . **I. L. R. 42 Bom. 363**

——— **s. 122**—*Power of High Court to make rules—Rules of Court of the 18th January, 1898, Chap. III, r. 2—Appeal—Limitation—Limitation Act (IX of 1908) s. 12.* The High Court framed a rule, with reference to the presentation of the appeals from appellate decrees, that "No memorandum of appeal from an appellate decree or from any order shall be presented, unless accompanied, by a copy of the decree or order appealed against, and, *where it exists, a copy of the judgment of the Court of first instance.* , ." *Held*, on a construction of this rule, that it did not connote that the appellant had a right to exclude from the period of limitation for filing his appeal the time requisite for obtaining a copy of the judgment of the Court of first instance. *Held*, also, that having regard to s. 122 of the Code of Civil Procedure, 1908, the rule in question was not *ultra vires*. NARSINGH SAHAI *v.* SHEO PRASAD (1917) . . . . **I. L. R. 40 Al. 1**

——— **s. 132, cl.** (*1*)—

See EXAMINATION ON COMMISSION.
I. L. R. 45 Calc. 697

——— **ss. 132, 133**—

See EXAMINATION ON COMMISSION.
I. L. R. 45 Calc. 492

——— **ss. 144, 151 and O. XXI, r. 90**—*Restitution—Order refusing to set aside sale—Order reversed on appeal—Auction-purchaser, not a party to proceedings or appeal—Application by judgment-debtor for restitution against auction-purchaser, whether maintainable—Auction-purchaser, whether a representative of decree-holder.* Where an order passed under O. XXI, r. 90 of the Civil Procedure Code refusing to set aside a sale held in execution of a decree, was reversed on appeal but the auction-purchaser was not made a party to the proceedings for setting aside the sale or to the appeal therefrom and the judgment-debtor subsequently applied for restitution against the auction-purchaser. *Held* (*i*) that s. 144 of the Civil Procedure Code did not in terms apply, as no decree was varied or reversed but only an order under O. XXI, r. 90, was reversed on appeal; (*ii*) that, assuming that s. 151 allowed an order for restitution in appropriate cases not falling under s. 144, such an order could not be made unless the auction-purchaser was a party before the Appellate Court which set aside the sale; and (*iii*) that a Court auction-purchaser was not a representative of the decree-holder. *Manicka Udayan* v. *Rajagopala Pillai, I. L. R. 30 Mad. 507* and *Nadamuni Narayana Iyengar* v. *Veerabhadra Pillai, I. L. R. 34 Mad. 417*, referred to. SUBBAMMA *v.* CHENNAYYA (1917).
I. L. R. 41 Mad. 467

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 144**—*concld.*

——— **s. 145**—*Surety-bond executed in execution proceeding—Liability of surety, if continues after the termination of the particular execution proceeding, or ceases with the dismissal of the particular execution case.* In a certain execution proceeding, the decree-holder had attached the standing crops of the judgment-debtor, whereupon certain other persons put in a claim to those crops. The claimants were permitted to cut away the crops on two other persons standing sureties to pay Rs. 50 to the decree-holder if the claim was ultimately disallowed. Eventually the claim case was dismissed and the execution case was also struck out for default. In the next execution case, the decree-holder having sought execution against the sureties, the latter contended that the bond became inoperative as soon as the execution case, in the course which it was furnished, was dismissed and they could not be made liable. *Held*, the mere fact that the execution case against the judgment-debtor was dismissed after the claim was dismissed, does not affect the question of the liability under the bond. Had there been a suit under the bond, there is no doubt that the sureties could have been made liable. The present Code, however, provides for realization of the amount due under the bond by execution. AJITULLA SARKAR *v.* NANDOOR MAHAMMAD (1917) . . . **22 C. W. N. 919**

——— **s. 145 and O. XXXII, r. 6**—*Security enabling next friend to receive monies due to minor under decree—Attachment of surety's property for sums not accounted for, legality of.* Security being furnished, the next friend of a minor and the surety were permitted to draw from the Court monies due to a minor under a decree. On dafault in accounting, the amount due to the estate of the minor was directed to be realized by attachment of the property of the surety. *Held*, that the order for attachment was made without jurisdiction as neither s. 145 nor any other provision of the Code of Civil Procedure empowers the Court to attach the property of the surety. KURUGODAPPA *v.* SOOGAMMA (1917) . . **I. L. R. 41 Mad. 40**

——— **s. 146 and O. XXII, r. 10**—*Suit originally filed in a District Munsif's Court—Plaint returned and filed in a Subordinate Judge's Court—Suit property mortgaged to another during pendency of suit in the former Court—Decree for plaintiff by Subordinate Court—Petition to District Court by mortgagee for permission to appeal, if competent—Appeal by mortgagee against decree of Subordinate Judge's Court, whether, maintainable.* A plaint filed in a District Court was, on objection taken by the defendant to the valuation of the suit, ordered to be returned and was presented in the Subordinate Judge's Court. While the suit was pending in the District Munsif's Court, the suit property was mortgaged by the defendant to the appellant. On the suit being decreed by the Subordinate Judge in favour of the plaintiff, the defendant did not prefer an appeal; the *appellant*, as the mortgagee of the suit property pending suit alleging collusion between the plaintiff and the defendant, filed an

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 146**—*concld.*

application in the District Court under O. XXII, r. 10, for an order allowing him to prefer an appeal, and also preferred an appeal against the decree. The District Judge dismissed both the petition and the appeal as incompetent. The appellant preferred to the High Court a Civil Miscellaneous Appeal and a second appeal against the decisions respectively. *Held*, that O. XXII, r. 10, only governs applications made to continue a suit and that an application presented after the termination of the suit was not within the rule; *Subba Pillai* v. *Rungasami*, (1917) *Mad. W. N. 306* and *The Collector of Muzaffernagar* v. *Husaine Begam*, *I. L. R. 18 All. 86*, followed. *Held*, also, that, under s. 146 of the Civil Procedure Code, it was competent to the mortgagee to prefer an appeal to the District Court against the decree of the Subordinate Judge, and that the District Judge was bound to dispose of the appeal on the merits, notwithstanding the dismissal of the petition under O. XXII, r. 10. Where a plaint is returned for presentation to the proper Court, any devolution of interest during the pendency of proceedings in the first Court must be taken to be a devolution of interest during the pendency of the suit in the second Court. *Sesha giri Row* v. *Vapa Velayudam Pillai*, *I. L. R. 36 Mad. 492*, distinguished. SITARAMASWAMI *v.* LAKSHMI NARASIMHA (1917) . . . **I. L. R. 41 Mad. 510**

——— **ss. 151 and 144**—*Money deposited in Court—Withdrawal by one party—Undertaking by party to repay amount—No provision in undertaking to pay interest—Application by party entitled to recover amount with interest—Power of Court to enforce undertaking—Liability for interest.* The plaintiffs having sued to establish their right to certain money which had been paid into Court by a third party, the defendant was allowed to draw the money on an undertaking to repay it if the plaintiffs succeeded. The plaintiffs having obtained a decree, *held*, that the Court had inherent power to order the defendant to repay the money, and that he could be made liable for interest as he had had the wrongful use of the money. *Rodger* v. *The Comptoir D'Escompte DeParis*, *L. R. 3 P. C. A. C. 465*, *Subbarayudu* v. *Yerram Setti Seshasani*, *I. L. R. 40 Mad. 299*, and *Indra Chund Bothra* v. *Mr. A. H. Forbes*, *2 Pat. L. J. 149*, referred to. ALAGAPPA CHETTIAR *v.* MUTHUKUMARA CHETTIAR (1917) . . . . **I. L. R. 41 Mad. 316**

——— **O. I, rr. 1, 3; O. II, r. 3**—

See MISJOINDER . **I. L. R. 45 Calc. 111**

——— **O. I, r. 3; O. XXIII, r. 1**—*Procedure—Suit dismissed for misjoinder of parties and of causes of action—Plaintiff permitted to withdraw suit with liberty to bring fresh suits.* Where it was found on second appeal to the High Court that the suit out of which the appeal had arisen was bad for misjoinder of parties and of causes of action, in that there was no community of interest between the various defendants, whose sole connection with each other was that they were purchasers of different portions of property, the whole of which was claimed by the plaintiff, the High Court permitted the suit to be withdrawn on terms as to costs, with liberty to the plaintiff to bring separate suits against each of the defendants. AFZAL SHAH *v.* LACHMI NARAIN (1917) . **I. L. R. 40 All. 7**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. I, r. 8**—

See MUTT . . **I. L. R. 41 Mad. 124**

——— **O. I, r. 8; O. XXI, r. 89 and s. 35**

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

——— **O. II, r. 2**—

See AMENDMENT OF PLAINT.
I. L. R. 45 Calc. 305

——— **O. III, r. 1 and O. IX, r. 12**—*Order of Court directing a party to appear in person—Refusal of the party to comply with the order—Order of Court declaring him ex parte, legality of.* A Court is empowered, under O. III, r. 1, of the Civil Procedure Code, to direct the appearance in Court of a party in person and if the party so directed refuses to appear, the Court may declare him *ex parte* even though he had engaged a pleader who is prepared to appear for him in the case. *Satu* v. *Hanmantrao*, *I. L. R. 23 Bom. 318*, dissented from. VAIGUNTATHAMMAL *v.* VALLIAMMAN (1917).
I. L. R. 41 Mad. 256

——— **O. VI, r. 14**—*Procedure—Plaint—Distinction between signature of plaint and authorization of suit—Suit filed on behalf of a person in jail.* O. VI, r. 14, of the Code of Civil Procedure, which requires a pleading to be signed by a party, is merely a matter of procedure. It is the business of the Court to see that this provision is carried out. It is also the business of the Court to see that a suit is authorized by the plaintiff. The authority for the bringing of a suit is a question of principle. But where a suit is duly authorized, the proper signing of the plaint is a matter of practice only, and if a mistake or omission has been made, it may be amended at any time. *Basdeo* v. *John Smidt*, *I. L. R. 22 All. 55*, *Rajit Ram* v. *Katesar Nath*, *I. L. R. 18 All. 396*, and *Cropper* v. *Smith*, *26 Ch. D. 700*, referred to. The mere fact that the signing of a plaint by or on behalf of a plaintiff who was in jail at the time might have involved a breach of jail regulations has nothing to do with the question of the validity or invalidity of the plaint. *In the matter of the petition of* BISHESHAR NATH (1917).
I. L. R. 40 All. 147

——— **O. IX, rr. 3, 6**—*One plaintiff out of six present—Appearing plaintiff, general attorney for the others—Dismissal of suit for want of prosecution—Dismissal on merits—Second suit on same cause of action barred.* On the date fixed for the hearing of a suit neither the defendants, not their pleader appeared. The plaintiffs' pleader also did not appear, but one of the plaintiffs was present. He was also the general attorney of the other plaintiffs. The Court dismissed the suit for "want of prosecution." The plaintiffs applied to have the dismissal set aside, but their application was refused on the ground that their remedy was by means of a separate suit. They consequently brought a second suit claiming the same reliefs as they had claimed in the former suit. *Held* that, inasmuch as all the plaintiffs must be deemed to have been present through the plaintiff who had appeared and was general attorney for the non-appearing plaintiffs, the suit must be regarded as having been dismissed on the merits, and not under O. IX, r. 3, of the Code of Civil Procedure, and a second

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. IX, rr. 3, 6—*concld.*

suit on the same cause of action was therefore barred. HINGU SINGH *v.* JHURI SINGH (1918).
I. L. R. 40 All. 590

——— O. IX, r. 9, s. 115—*Application to set aside order dismissing suit for default of appearance should be disposed of on evidence—Revision.* Where an application by the plaintiff for postponement of a case fixed for peremptory disposal on the ground that the plaintiff was ill and unable to attend Court having been refused, the suit was called on for disposal and dismissed for default; and an application to set aside the order under O. IX, r. 9. of the Civil Procedure Code was, without recording evidence, summarily dismissed, the Judge observing that he would not go over the same grounds again. *Held*, in revision under s. 115 of the Civil Procedure Code, that an application under O. IX, r. 9, must be disposed of on the evidence after it has been properly recorded, whether the procedure of the Court be to take the evidence *viva voce* or by affidavit. It could not be disposed of on the view of the Judge merely as to whether the application was *bonâ fide* or not. DURGA KANTA SARMA *v.* ANTO KOCH (1917) . **22 C. W. N. 671**

——— O. IX, r. 13—

1. ——— *Compromise decree, application to set aside by one not a party to it—Appeal. Held, per* Curiam (RICHARDSON, *J. dubitante*). An application by a party to a suit to set aside a compromise decree on the ground that as against him the decree was *ex parte*, comes under O. 9, r. 13, of the Civil Procedure Code, and an appeal lies against the order refusing the application. BASIRUDDIN *v.* SHEIKH SADHU (1918).
22 C. W. N. 571

2. ——— *O. XVII, rr. 2 and 3, scope of—Decree ex parte—Defendant absent at adjourned hearing after taking adjournment for letting evidence.* Where, at the close of the plaintiff's case, an adjournment was granted to the defendant to enable him to produce his evidence and he failed to appear at the adjourned hearing, and the Court proceeded to pass a decree against him. *Held* by the Full Bench, that the case came within O. XVII, r. 2, and the decree could be set aside under O. IX, r. 13, *Per* SADASIVA AYYAR and KUMARASWAMI SASTRIYAR, JJ. Rr. 2 and 3 of O. XVII, Civil Procedure Code, are mutually exclusive: r. 2 applies to all cases of absence of parties whether time was granted or not to do any of the acts mentioned in r. 3 of the Order, while r. 3 applies only to cases where parties are present and commit default of the kind mentioned in the rule. *Per* WALLIS, C.J. Rr. 2 and 3 of O. XVII are not mutually exclusive. R. 3 *may* be applied even in the absence of the defendant, but the decree will none the less, be *ex parte* and liable to be set aside. *Chandramathi Ammal* v. *Narayanasami Aiyar, I. L. R. 33 Mad. 241*, followed. *Naganada Aiyar* v. *Krishnamurti Aiyar, I. L. R. 34 Mad. 97*, overruled. PICHAMMA *v.* SREERAMULU (1917).
I. L. R. 41 Mad. 286

——— O. XII, r. 6—

See COMMISSION AGENCY.
I. L. R. 45 Calc. 138

——— O. XIII, r. 1—

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 45 Calc. 878

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XVII, rr. 2, 3—

See CIVIL PROCEDURE CODE, (ACT V OF 1908), O. IX, R. 13.
I. L. R. 41 Mad. 286

——— O. XVIII, rr. 5, 6—

See DEPOSITION. **I. L. R. 45 Calc. 825**

——— O. XXI, r. 2, cl. (1)—

See EXECUTION PETITION.
I. L. R. 41 Mad. 251

——— O. XXI, r. 2 (3)—

See LIMITATION . **I. L. R. 45 Calc. 630**

——— O. XXI, r. 7—*Execution of decree—Decree passed against a deceased person—Objection by alleged representatives of the deceased judgment-debtor that the decree is a nullity and incapable of execution against them.* It is a good answer to an application for execution against the alleged representatives of a judgment-debtor to show that the judgment-debtor was dead at the time that the decree was made, and that such decree is void and incapable of a execution as against the person so dead. *Imdad Ali* v. *Jagan Lal, I. L. R. 17 All. 478*, followed. SRIPAT NARAIN RAI *v.* TIRBENI MISRA (1918) . . . **I. L. R. 40 All. 423**

——— O. XXI, r. 32—*Execution of decree—Decree declaraing rights of certain parties and forbidding interference therewith by other parties to suit—Mode of enforcing such decree.* A decree was passed declaring the rights of certain parties to the suit to conduct certain religious ceremonies and enjoining on certain other parties to the suit to refrain from interfering with the celebration of the said ceremonies by the parties in whose favour the decree was passed. *Held*, that it was not competent to the Court passing such decree to secure obedience thereto by directing the Superintendent of Police to see that the ceremonies were carried out and to prevent interference therewith, nor was it competent to the Court to appoint a commissioner to see that the terms of the decree were given effect to. GOSWAMI GORDHAN LALJI *v.* GOSWAMI MAKSUDAN BALLABH (1918).
I. L. R. 40 All. 648

——— O. XXI, r. 32, cls. (1), (5)—*Breach of prohibitory injunction—Remedy, if by suit or application in execution.* The remedy for a breach of a permanent injunction is by application for execution and not by suit. *Per* RICHARDSON, *J.* (BEACHCROFT, *J.* not expressing any opinion)—O. XXI, r. 5 of the Civil Procedure Code applies to injunctions both mandatory and prohibitory. SACHI PROSHAD MUKERJI *v.* AMAR NATH ROY (1918) . . . . . **22 C. W. N. 851**

——— O. XXI, r. 58—*Execution of decree—Limitation Act (IX of 1908), sch. I, art. 11—Limitation—Objection to attachment dismissed—Subsequent suit for possession—Investigation of objection by Court.* Art. 11 (1) of the first schedule to the Indian Limitation Act, 1908, applies only to those orders made under O. XXI, r. 51, which are made after investigation of the claim or objection; but it does not follow that, merely because the claimant has not adduced evidence or has not appeared, there has been no investigation within the meaning of the rule. *Rahim Bun* v. *Abdul Kader, I. L. R. 32 Calc. 537, Shagun Chand*, v. *Shibbi, 8 A. L. J. 626, Chandi Prasad*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

——— **O. XXI, r. 58**—*concld.*

v. *Nand Kishore, 20 Indian Cases 369, Lachmi Narain* v. *Martindell, I. L. R. 19 All. 253,* and *Kunj Behari Lal* v. *Kandh Prasad Narain Singh, 6 C. L. J. 362,* referred to. GOKUL *v.* MOHRI BIBI (1918) . . . **I. L. R. 40 All. 325**

——— **O. XXI, rr. 58, 63**—

See LIMITATION. **I. L. R. 45 Calc. 785**

——— **O. XXI. rr. 58 to 63**—

——— *Order refusing in effect to investigate claim whether an order 'against' claimant within O. XXI, r. 63, Civil Procedure Code and art. 11 of Limitation Act (IX of 1908). Held,* by the Full Bench (*1*) that an order refusing to investigate a claim to attached property, on the ground that there was delay in filing it, is an order passed 'against' the claimant within O. XXI, r. 63, Civil Procedure Code, and art. 11 of the Limitation Act (IX of 1908) and (*2*) that an order on a claim petition merely stating that, as it was filed late, it will be notified to the bidders is in effect an order rejecting the claim to which the provisions of O. XXI, r. 63, will apply. *Narasimha Chetty* v. *Vijiapala Nainar, 2 L. W. 206,* and *Ponnusami Pillai* v. *Samu Ammal, 31 Mad. L. J. 247,* followed. *Thithikutti Umma* v. *Thalathodi Chekkammutti (Second Appeal No. 1986 of 1916),* overruled. VENKATARATNAM *v.* RANGANAYAKAMMA (1918) . . **I. L. R. 41 Mad. 985**

——— **O. XXI, r. 63**—*Applicability to claims to property attached before judgment—O. XXXVIII, r. 5. Held* by the Full Bench, that O. XXI, r. 63, Civil Procedure Code, applies also to orders on claims preferred to property attached before judgment. *Ramanamma* v. *Bathula Kamaraju, I. L. R. 41 Mad. 23,* overruled. PRASADA NAYUDU *v.* VIRAYYA (1918) . . **I. L. R. 41 Mad. 849**

——— **O. XXI, r. 66**—*Execution of decree—Suit for declaration that property is not liable to attachment and sale—Valuation of suit.* In a suit for a declaration that property is not liable to attachment and sale in execution of a decree, where the value of the property in question is in excess of the amount claimed in execution of the decree, the proper valuation of the suit for the purpose of jurisdiction is, not the value of the property, but the amount for which the decree may be executed. *Khetra Pal* v. *Munmtaz Begam, I. L. R. 38 All. 72,* followed. *Radha Kunwar* v. *Reoti Singh, I. L. R. 38 All. 488,* referred to. ANANDI KUNWAR *v.* RAM NIRANJAN DAS (1918). **I. L. R. 40 All. 505**

——— **O. XXI, rr. 71 and 84 to 87**—*Purchase in a Court sale of judgment-debtor's right to get a reconveyance of certain lands—Default in payment of balance of purchase-money within fifteen days of Court sale—Liability of purchaser for deficiency on resale.* A purchaser in a Court auction of a judgment-debtor's right to get a reconveyance of certain lands on payment of a specified sum is, on default in payment of the purchased money within fifteen days of the Court sale, liable to pay under summary process under O. XXI, r. 71, Civil Procedure Code, any deficiency in the price on a resale, though the date stipulated for payment to get the reconveyance happens to be shortly after the Court sale and before the expiry of the fifteen days allowed for the payment of the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, rr. 71 and 84 to 87**—*concld.*

balance. The loss of the right to get a reconveynace which is a substantial right, occasioned by the neglect of the purchaser to exercise his right to pay at the stipulated time, does not make the property resold, any the less the same property as the one sold before, provided all the then existing rights of the judgment-debtor therein are correctly stated in the proclamation for the resale. Cases in which an existing encumbrance on the property is omitted to be mentioned at the time of the first sale but finds a place in the proclamation for the resale stand on a different footing. *Baijnath Sahai* v. *Moheep Narain Singh, I. L. R. 16 Calc. 535,* and *Kali Kishore Deb Sarkar* v. *Guru Prosad Sukal, I. L. R. 25 Calc. 99,* distinguished. VENKATACHELLAMAYYA *v.* NILAKANTA GIRJEE (1917). **I. L. R. 41 Mad. 474**

——— **O. XXI, rr. 73 and 83**—*Several decree-holders—Execution—Attachment in each decree—Applications for sale—Permission to judgment-debtor to raise money by private alienation to pay off one of the decrees—Money paid into Court by alienee—Rateable distribution—"Assets held by a Court," meaning of.* Where several decree-holders in different suits had attached the same property of their judgment-debtor and applied for sale in execution of their respective decrees, but the judgment-debtor obtained permission of the Court under O. XXI, r. 83, to raise money by private alienation of the property to pay the decree amount due in one of the decrees, and the amount was paid into Court by the alienee. *Held,* that the money, having been paid into Court under a pending execution application, was assets held by the Court under O. XXI, r. 73 of the Code, and was liable to rateable distribution among the several decree-holders who had applied for execution. *Sorabji Coovarji* v. *Kala Raghunath, I. L. R. 36 Bom. 156,* dissented from. *Kathum Sahiba* v. *Hajee Badsha Sahib, I. L. R. 38 Mad. 221, 224,* referred to. *Galstaun* v. *Woomes Chundra Bonnerjee, I. L. R. 44 Calc. 789,* distinguished. THIRAVIYAM PILLAI *v.* LASKSHMANA PILLAI (1917). **I. L. R. 41 Mad. 616**

——— **O. XXI, rr. 89, 92**—*Execution of decree—Application to set aside sale in execution—Decree sent to Collector for execution—Tender of money to the Collector, the Civil Courts being closed—"Court."* The word "Court" as used in rr. 89 and 92 of O. XXI of the Code of Civil Procedure means the Civil Court, and not, in the case of a decree being transferred to the Collector for execution, the Collector. FAZAL RAB *v.* MANZUR AHMAD (1918) . . . **I. L. R. 40 All. 425**

——— **O. XXI, r. 90**—*Persons entitled to apply for setting aside sale—"Persons whose interests are affected by the sale"—Purchaser of holding sold in execution of mortgage decree if can apply for setting aside sale subsequently held by landlord in execution of rent decree.* A holding was sold in execution of a mortgage decree against the tenant and purchased by the mortgagee; it was subsequently sold at the instance of the landlord in execution of a rent decree and the mortgagee applied under O. XXI, r. 90, Civil Procedure Code, to have the sale set aside on th eground of material irregularity and fraud in conducting the sale. *Held,* that the words of r. 90 'whose interests are affected by the sale" are very wide and the mort-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI, r. 90**—*concld.*

gagee had *locus standi* to make the application for setting aside the sale as his interests were clearly affected by the sale. SAILABALA DEBI *v.* NRITYA GOPAL SEN (1915) . . . **22 C. W. N. 143**

——— **O. XXI, r. 93**—*Suit by purchaser of occupancy holding evicted in execution of landlord's decree to recover purchase-money, if maintainable.* The plaintiff purchased an occupancy holding in execution of a decree obtained by the mortgagee of the property and took possession of it; he was sued in ejectment by the landlords in whose favour a decree was subsequently made. The plaintiff sued to recover the purchase-money with interest. *Held*, that under the present Code of Civil Procedure the suit was incompetent. JURANU MAHAMAD *v.* JATHI MAHAMAD (1917) . **22 C. W. N. 760**

——— **O. XXI, r. 95**—*Execution of decree—Transferee from auction-purchaser—Order for delivery of possession—Appeal—Revision.* A purchased certain immovable property at an auction sale held in execution of a decree and thereafter transferred the property so purchased to B, the decree-holder B applied under O. XXI, r. 95, of the Code of Civil Procedure for an order for delivery of possession of the property purchased from A, and an order was passed. *Held*, that no appeal lay from the order for delivery of possession. *Bhagwati* v. *Banwari Lal, I. L. R. 31 All. 82*, referred to. BUDDHU MISIR *v.* BHAGIRATHI KUNWAR (1917). **I. L. R. 40 All. 216**

——— **O. XXI, rr. 100, 101 and 103**—*Application made under r. 100—Order dismissing the application under r. 101—Whether such an order is an order "made under r. 101" within the meaning of those words in R. 103—Conclusive nature of the order.* An order made against an applicant refusing him relief under r. 101 of O. XXI of the Civil Procedure Code, 1908, is as much an order under that Rule, as an order granting him relief would be and the order would be conclusive under r. 103 subject to the result of a separate suit. ZIPRU *v.* HARI SUPDUSHET (1917). **I. L. R. 42 Bom. 10**

——— **O. XXII**—

See PARTIES. **I. L. R. 45 Calc. 862**

——— **O. XXII, r. 5**—

See HINDU LAW—PARTITION. **I. L. R. 42 Bom. 535**

——— **O. XXIII, r. 1**—*Suit for ejectment—Insufficiency of notice to quit—Withdrawal of the suit without permission of the Court—Fresh suit after proper notice—Whether the previous suit a suit for the same subject matter—Res Judicata—Subject matter, meaning of.* A suit was brought by the plaintiff to eject the defendant. Finding however that there was no sufficient notice to quit, he withdrew the suit without obtaining the leave of the Court. Subsequently the plaintiff having given a formal notice to quit brought a fresh suit for ejectment. The defendant contended that the withdrawal of the former suit without permission operated as a bar to the second suit under O. XXIII, r. 1 of the Civil Procedure Code, 1908. *Held*, that the withdrawal did not operate as a bar as the previous suit was not a suit for the same subject matter as the second suit within the meaning of O. XXIII, r. 1 of the Civil Procedure Code, 1908.

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXIII, r. 1**—*concld.*

'Subject-matter' means 'the series of acts or transactions alleged to exist giving rise the relief claimed.' RAKHMABAI *v.* MAHADEO NARAYAN (1917) . . . **I. L. R. 42 Bom. 155**

——— **O. XXIII, r. 1; s. 115**—*Application by plaintiff to withdraw suit with leave to bring a fresh one made when hearing of suit was nearly concluded—Leave granted to bring a fresh suit—Exercise of discretion—Revision.* A suit was instituted in the Court of the Munsif. After the evidence had concluded and either during or after the argument, the plaintiffs applied for leave to withdraw with liberty to bring a fresh suit. They based their application upon the fact that they had failed to give formal proof of a plaint which was essential to their success. The Court granted leave to bring a fresh suit. Upon an application in revision against this order:—*Held*, that the Court had jurisdiction to grant leave to the plaintiffs to bring a fresh suit, and the fact that the Court may have exercised, and probably did exercise, a wrong discretion in granting the plaintiffs' application was not sufficient to bring the case within the purview of s. 115 of the Code of Civil Procedure. JHUNKU LAL *v.* BISHESHAR DAS (1918) . . . . **I. L. R. 40 All. 612**

——— **O. XXIII, r. 1(2) (*a*) and (*b*), O. VII, r. 10 and s. 115**—*Withdrawal of suit—Suit grossly under valued in the plaint—Real valuation beyond the jurisdiction of the District Munsif's Court—Application by plaintiff for leave to withdraw portion of the suit with liberty to bring fresh suit—Leave, whether properly can be granted—Judicial discretion—Jurisdiction—Ejusdem generis—Material irregularity in exercise of jurisdiction—'Other sufficient grounds, in O. XXIII, r. 1 (2) (b), construction of.* The plaintiffs instituted a suit in a District Munsif's Court for recovery of possession of several items of immoveable property including a house, valuing the house at Rs. 200 and other items at Rs. 1,917 and odd for purposes of jurisdiction. The defendant objected that the house was grossly undervalued and that the suit was, on proper valuation beyond the jurisdiction of the District Munsif. A commissioner, appointed to ascertain its value, reported that the house alone was worth Rs. 6,500. The plaintiff thereupon applied to the Court for leave to withdraw the suit in respect of the house with liberty to bring a fresh suit therefor; the Court granted the application, notwithstanding the objection of the defendant. The latter preferred a Civil Revision Petition to the High Court against the order. *Held*, that, assuming that the lower Court had jurisdiction to act under O. XXIII, r. 1 (2) (*b*) it acted with material irregularity in the exercise of its jurisdiction, as it did not exercise a *judicial discretion* in passing the order; that the plaintiff ought not to have been permitted to withdraw his claim for the house, as the undervaluation in the plaint was so gross that he could not have acted honestly in doing so and did not deserve any indulgence from the Court; and that consequently the High Court should interfere under s. 115 of the Civil Procedure Code and set aside the order. *Per* SADASIVA AYYAR, *J.* The words 'other sufficient grounds' in O. XXIII, r. (2) (*b*), should not be interpreted *ejusdem generis* with 'formal defect' in r. 1 (2) (*a*). Limits of the doctrine of *ejusdem generis* discussed. After a Court

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXIII, r. 1** (2) (*a*) **and** (*b*)—*concld.*

of first instance has come to the conclusion that the suit as brought is beyond its jurisdiction, it has no power to pass any other judicial order in the suit except those which the statute expressly empowers it to pass, such as an order returning the plaint for presentation to the proper Court under O. VII, r. 10, or an order awarding costs under s. 35 of the Code. KANNUSWAMI PILLAI *v.* JAGATHAMBAL (1918) . **I. L. R. 41 Mad. 701**

——— **O. XXIII, r. 3, and s. 96, cl.** (3)—*Compromise—Power of vakil to enter into—Construction of vakalat—Recording of compromise—Duty of Court to inquire—Decree in terms of compromise—Appeal, when allowed.* A *vakalat* containing a provision authorizing the vakil "to present if necessary petitions for *razinama*, for withdrawal and for referring to arbitration and to sign the *razinama*, etc., petitions," does not give authority to the vakil to enter into a compromise without reference to his clients. An appeal lies against a decree passed in accordance with a compromise, where the authority to enter into it, is impeached. *Ayyagiri Veerasalingam* v. *Koopur Basivi Reddi, 27 Mad. L. J. 173*, followed. *Jagapati Mudaliar* v. *Ekambara Mudaliar, I. L. R. 21 Mad. 274*, and *Raghoji Rao* v. *Lakshman Rao Sahib, 22 Mad. L. J. 381*, referred to. Duty of Courts to scrutinize compromises before recording them pointed out. THENAL AMMAL *v.* SOKKAMMAL (1917) . . . . **I. L. R. 41 Mad. 233**

——— **O. XXVI, r. 1**—*Commission to examine witnesses.* The Courts should not allow witnesses to be examined on commission without adequate reasons. PANACHAND CHHOTALAL *v.* MANOHARLAL NANDLAL (1917) . . **I. L. R. 42 Bom. 136**

——— **O. XXXIII**—*Company—Official liquidator, right of, to apply for leave to sue in forma pauperis—'Person' definition of—General Clauses Act (X of 1897), whether applicable to O. XXXIII—Explanation to r. 1 and r. 3 of O. XXXIII, construction of.* An official liquidator of a company is competent to apply for leave to sue *in forma pauperis* on behalf of the company under O. XXXIII of the Civil Procedure Code, if the company is a pauper within r. 1 thereof. The reference to 'necessary wearing apparel' in the explanation to r. 1 and the provisions of r. 3 requiring presentation of petition by 'applicant in person' in O. XXXIII do not necessarily exclude the application of the Order to a company, and the definition of 'person' as including a company under the General Clauses Act (X of 1897) applies to O. XXXIII of the Code as there is nothing in the definition which is repugnant to the subject or context of the Order. The fact that the liquidator in his personal capacity is not a pauper does not affect the question; nor does the fact that the liquidator receives a commission on collections realized, make him a person interested in the subject-matter of the suit within cl. (*e*), r. 5 of O. XXXIII. *Cortes* v. *Kent Water-Works Company, 7 B. & C. 314*, and *Venkatanarasayya* v. *Achemma, I. L. R. 3 Mad. 3*, followed. *In the matter of the will of Demubai, I. L. R. 18 Bom. 237*, and *Manaji Rajinji* v. *Kandoo Baloo, I. L. R. 36 Bom. 279*, distinguished. PERUMAL GOUNDAN *v.* THIRUMALARAYAPURAM JANANUKOOLA DHANASEKHARA SANGHA NIDHI (1917).

I. L. R. 41 Mad. 624

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIII, r. 5**—*Application for leave to sue in forma pauperis—Question to be decided by Court before granting leave—Limitation—Doubtful question—Difference of judicial opinion—Duty of Court.* Upon an application for leave to sue *in forma pauperis*, the Court is not justified in determining, at the stage contemplated by O. XXXIII, r. 5 of the Civil Procedure Code, a question of limitation as to which there has been considerable difference of judicial opinion, Order XXXIII, rule 5 (*d*) applies only to cases where the allegations of the petitioner do not show a cause of action, and this should appear *clearly upon the face* of the petition. GOVINDASAMI PILLAY *v.* MUNICIPAL COUNCIL, KUMBAKONAM (1917).

I. L. R. 41 Mad. 620

——— **O. XXXIV, rr. 1, 2, 3**—*Execution of decree—Payment of part of decretal amount into Court—Effect of payment as regards running of interest on the decree.* Where money is paid into Court by the judgment-debtor in satisfaction of a decree, interest on the decree will cease from the date of payment in proportion to the amount paid, although such amount may not in fact be the whole amount due under the decree. AMTUL HABIB *v.* MUHAMMAD YUSUF (1917) . **I. L. R. 40 All. 125**

——— **O. XXXIV, rr. 4, 5, 10**—*Suit for sale on a mortgage—Form of decree—Construction of decree—Costs—Appeal.* A suit for sale on a mortgage was decreed by the Court of first instance, dismissed by the Court of first appeal, and again decreed by the High Court. In the judgment of the High Court it was stated. "We must allow the appeal, set aside the decree of the lower Appellate Court, and restore the decree of the Court of first instance with costs in all Courts." The decree of the High Court was drawn up on one of the High Court forms. It stated that the appeal had been allowed, the decree of the lower Appellate Court set aside, and the decree of the Court of first instance restored. It went on to state. "And it is further ordered that the respondent do pay to the appellant Rs. 554-6-9, the amount of costs incurred by the latter in this Court and in the lower Appellate Court." *Held*, that in construing this decree it was open to the Court to consider, first, the nature of the suit, secondly, the judgment of the High Court upon which the decree was founded, and the general practice of the Court, and that, considering these matters, the intention was that there should be the ordinary mortgage decree awarding the costs incurred in the suit and up to the time of the final decree to be realized by sale of the mortgaged property. *Maqbul Fatima* v. *Lalta Prasad, I. L. R. 20 All. 513*, and *Ambe Sahai* v. *Shambhu Nath, E. S. A. No. 87 of 1900*, followed. DAMBAR SINGH *v.* KALYAN SINGH (1917).

I. L. R. 40 All. 109

——— **XXXIV, r. 5**—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 181, 182.

I. L. R. 42 Bom. 309

——— **O. XXXIV, r. 5**—

——— *Suit for sale on a mortgage—Application for final decree—Limitation—Limitation Act (IX of 1908), sch. I, art. 181.* An application for a final decree under O. XXXIV, r. 5, of the Code of Civil Procedure is an application in the suit, and not an application in execu-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

O. XXXIV, r. 5—*concld*

tion : the limitation applicable is that prescribed by art. 181 of sch. I to the Indian Limitation Act, 1908, and time begins to run, if there has been an appeal in the suit, from the date of the decree of the final Court of Appeal. *Gajadhar Singh* v. *Kishan Jiwan, Lal I. L. R. 39 All. 641*, referred to. NIZAM-UD-DIN SHAH *v.* BOHRA BHIM SEN (1918) . . . . **I. L. R. 40 All. 203**

O. XXXIV, r. 6—

See MORTGAGE. **I. L. R. 45 Calc. 702**

———— *Application for decree over against the mortgagor—Limitation—Limitation Act (IX of 1908), Sch. I. Art. 181.* An application for a decree under the provisions of O. XXXIV, r. 6 of the Code of Civil Procedure is not an application for the execution of the original decree for sale, but is an application in the original suit for a new decree. Such an application is governed as to limitation by art. 181 of sch. I to the Indian Limitation Act, 1908, and must be made within three years from the date when the right to apply accrued. *Bihari Lal* v. *Bisheshar Dayal, 9 A. L. J. 569*, referred to. MUHAMMAD ILTIFAT HUSAIN *v.* ALIM-UN-NISSA BIBI (1918).

I. L. R. 40 All. 551

O. XXXIV, rr. 14, 15—

See EXECUTION OF DECREE.

I. L. R. 45 Calc. 530

O. XXXVIII, r. 2—*Arrest of defendant before judgment—Deposit of money in Court—Right of the plaintiff to the amount on obtaining decree—Rights of Official Receiver in insolvency and of other attaching creditors of the defendant.* The defendant was arrested before judgment and was ordered to be released from custody on his depositing in Court a sum of money sufficient to meet the plaintiff's claim in the suit, under O. XXXVIII, r. 2, of the Civil Procedure Code. There was subsequently an attachment of the money by a decree-holder and an adjudication of the defendant as an insolvent. *Held*, that the money was paid into Court to the general credit of the action and charged with a lien in favour of the plaintiff on the latter obtaining a decree in his favour; and that the attaching creditor's and the Official Receiver's claims were subject to this lien. RAMIAH AIYAR *v.* GOPALIER (1918) . **I. L. R. 41 Mad. 1053**

O. XXXVIII, r. 5—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 63.

I. L. R. 41 Mad. 849

O. XXXIX, r. 2—

See INJUNCTION . **I. L. R. 41 Mad. 208**

O. XLI, r. 5—

1. ———— *Stay of execution by an Appellate Court—Order for execution by Court of first instance in ignorance of order of stay—Order for execution, validity of. Held* by the Full Bench. Where subsequent to an interim order for stay of execution made by an Appellate Court without notice to the decree-holder but before its communication to the Court of first instance, an order of attachment is made by the latter Court, the order of attachment is not void and ineffectual as having been made without jurisdiction, but is legally

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

O. XLI, r. 5—*concld.*

valid. The order is effective only from the time it is communicated to the first Court. *Muthukumarasami Rowther Minda Nayinar* v. *Kuppusami Aiyangar, I. L. R. 33 Mad. 74*, and *Bessesswari Chowdhurany* v. *Hurro Sundar Mozumdar, 1 C. W. N. 226*, followed. *Hukum Chand Boid* v. *Kamalanand Singh, I. L. R. 33 Calc. 927*, not followed. *Ramanathan* v. *Arunachellam, I. L. R. 38 Mad. 766*, overruled. VENKATACHALAPATI RAO *v.* KAMESWARAMMA (1917) . **I. L. R. 41 Mad. 151**

2. ———— *Whether applicable to stay execution not of the decree appealed against, but of some other decree—Petition to stay sale of immovable properties—Jurisdiction of Appellate Court to grant.* An application under O. XLI, r. 5, to stay the sale of immoveable property in execution of a decree pending an appeal therefrom can be made not only to the Court which passed the decree but also to the Appellate Court, both of which have concurrent jurisdiction. The rule however did not authorize an application to the Appellate Court for stay of execution in another suit. *Kanniappan Chetty* v. *Manickavasagam Chetty, 23 Mad. L. J. 677*, dissented from; *Triboni Sahu* v. *Bhagawat Bux, I. L. R., 34 Calc., 1037*, and *Rama Prosad* v. *Anukul Chandra, 20 C. L. J. 512*, referred to. LAKSHMANAN CHETTY *v.* P. P. V. PALANIAPPA CHETTY (1918).

I. L. R. 41 Mad. 813

O. XLI, r. 5 (*3*)—*Order under—Immoveable property given as security for decree by judgment-debtor, whether realizable in execution—Judgment-debtor taking advantage of a favourable order in execution—Estoppel.* Immoveable property given by a judgment-debtor as security for the due performance of a decree, pursuant to an order made under O. XLI, r. 5 (3), Civil Procedure Code, can be realized in execution without attachment, the matter being one relating to execution within s. 47, Civil Procedure Code, and a separate suit does not lie. *Sadasiva Pillai* v. *Ramalinga-Pillai, L. R. 2 I. A. 219*, applied. *Shyam Sundar Lal*, v. *Bajpai Jainarayan, I. L. R. 30 Calc. 1060*, followed. *Mukta Prasad* v. *Mahadeo Prasad, I. L. R. 38 All., 327*, and *Saminatha Pathan* v. *Sornatha Ammal, 22 Mad. L. J. 190*, referred to. *Tokhan Singh* v. *Girwar Singh, I. L. R. 32 Calc. 494*, distinguished. Where a judgment-debtor who could have been arrested for the entire amount of a decree is on his objection ordered to be arrested only for a certain amount on the ground that the balance could be realized by the sale of the lands given by him as security for the decree amount, he is estopped from afterwards disputing the right of the decree-holder to sell the lands for all the then balance of the decree even though such balance may exceed the amount for which the lands were originally tendered as security. *Sadasiva Pillai*, v. *Ramalinga Pillai, L. R. 2 I. A. 219*, followed. SUBRAMANIAN CHETTIAR *v.* RAJA OF RAMNAD (1917) . . . . **I. L. R. 41 Mad. 327**

O. XLI, r. 10—

See SECURITY FOR COSTS.

I. L. R. 42 Bom. 5

O. XLI, rr. 17, 19—

See APPEAL . **I. L. R. 45 Calc. 638**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

O. XLI, r. 22—

1. ——— *Appeal—Cross objection—Objection taken by respondent against co-respondent.* In a suit for sale on a mortgage, the deed upon which the suit was based purported to have been executed by six persons. In the Court of first instance, however, execution was held to have been proved as against four only of the alleged executants. These four appealed, making the other two alleged executants respondents along with the plaintiffs. The plaintiffs also filed cross-objections in which they sought to fix the two defendants respondents with liability for the mortgage deed. *Held*, that the plaintiffs were not precluded from filing objections against their co-respondents. *Abdul Ghani* v. *Muhammad Fasih*, *I. L. R. 28 All. 95*, followed. *Kallu* v. *Manni*, *I. L. R. 23 All. 93*, referred to. MUSLEHA BIBI *v.* RAM NARAIN SAHU (1918).

I. L. R. 40 All. 536

2. ——— When an appeal is dismissed as filed out of time a memorandum of objections filed by a respondent cannot be heard. ALAGAPPA CHETTIAR *v.* CHOCKALINGAM CHETTIAR (1918) . . . . **I. L. R. 41 Mad. 904**

O. XLI, r. 33— *Powers of the Appellate Court to reverse a finding of the lower Court in the appellants' favour, against which no cross-objection was preferred by the respondent under O. XLI. r. 22—Construction of document.* Plaintiff had sold his share in some lands and the buildings thereon, along with a passage, to defendants by a *kobala*. He subsequently sued, for recovery of a portion of the passage alleging that it had not passed by the *kobala*. The Munsif gave a partial decree, and the Subordinate Judge partially allowed the defendants' appeal, but reversed a portion of the Munsif's decree which was in favour of the defendants and against which the plaintiff had not preferred any cross-objection. *Held*, that in the appeal by the defendants, the lower Appellate Court, under the circumstances of the case, was not justified under O. XLI, r. 33, in interfering with the portion of the Munsif's decree which was in favour of the defendants, as the plaintiff had not filed any cross-appeal or taken cross-objection under O. XLI, r. 22. *Held*, further, on a construction of the *kobala* with reference to the pleadings and other documentary evidence, that the whole passage was sold, as there were statements in the deed which were inconsistent with the plaintiff having reserved any portion of the passage. GOPAL CHANDRA DAS *v.* NADIAR CHAND DAS (1917).

22 C. W. N. 526

O. XLIII, r. 1—

See MADRAS CIVIL COURTS ACT (III OF 1873), s. 14 . **I. L. R. 41 Mad. 721**

——— *Appeal—Order returning memorandum of appeal to be presented to the proper Court.* No appeal lies against the order of an Appellate Court returning a memorandum of appeal to be presented to the proper Court. NUR-UD-DIN KHAN *v.* PRAN KRISHAN CHAKRAVARTI 1918) . . . . **I. L. R. 40 All. 659**

O. XLIII, r. 1 (*w*); O. XLVII, rr. 1, 4, 7, 8.

See REVIEW . **I. L. R. 45 Calc. 60**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

O. XLIII, and s. 115—*Suit for rent in a Revenue Court-Service inam—Discontinuance of service—Ryoti land—Decree in Revenue Court—Appeal—Jurisdiction of Revenue Court—Plaint ordered by District Judge to be returned for presentation to Civil Court—Appeal to the High Court against order of District Judge, if competent—Order whether a decree—Estates Land Act (Madras Act I of 1908), s. 192, cl. (a)—Prohibition of appeals—Conversion of appeal into civil revision petition.* A landholder sued for arrears of rent in a Revenue Court from the defendants who originally held the lands on service tenure but had ceased to perform the services prior to the suit. The Revenue Court passed a decree in favour of the plaintiff. On appeal, the District Judge set aside the decree holding that the Revenue Court had no jurisdiction to entertain the suit and ordered that the plaint should be returned to the plaintiff for presentation to a proper Court. On plaintiff preferring as appeal to the High Court, the respondent raised a preliminary objection that the appeal did not lie. *Held*, that no appeal lay against the order of the District Judge, because s. 192 cl. (*a*) of the Estates Land Act prohibited the applicability of O. XLIII of the Civil Procedure Code to proceedings under the Act, and the order was not a decree under the Civil Procedure Code. *Held*, also, that the appeal should be converted into a civil revision petition under s. 115 of the Civil Procedure Code, as the latter section was not excluded by s. 192 of the Act; and that the Revenue Court had jurisdiction to entertain the suit, as the lands were ryoti lands and did not fall within the exception to ryoti land in s. 3 of the Act, inasmuch as the services were not performed at the date of the suit. *The Secretary of State for India* v. *Chelekani Rama Rao*, *I. L. R. 39 Mad. 617*, distinguished. RAJAH VENKATA RAMMAYYA v. VEERASWAMI (1917).

I. L. R 41 Mad. 554

O. XLIV, r. 1—*Application for leave to appeal in forma pauperis—Application rejected—Further application for leave to pay the full court-fee also rejected—Revision.* The rejection of an application made under O. XLIV, r. 1, of the Code of Civil Procedure, for leave to appeal as a pauper, is not the rejection of the appeal. It is, therefore, no ground for rejecting a subsequent application for permission to pay the full court-fee on the appeal. MUHAMMAD FARZAND ALI *v.* RAHAT ALI (1918). . . **I. L. R. 40 All. 381**

O. XLVII, r. 4, sub-cl. (2) (*b*)—

See LIMITATION ACT (IX OF 1908), ss. 5, 14. . **I. L. R. 42 Bom. 295**

O. XLVII, r. 5—*Application for review heard by one of a Bench of two Judges, the other having gone on a month's leave—Jurisdiction—Appeal under the Letters Patent.* Where one of a Bench of two High Court Judges who had disposed of an appeal, having left the Court on a month's leave, an application for review of the judgment was heard and dismissed by the remaining Judge. *Held*, that the learned Judge had no jurisdiction to dispose of the application, by reason of r. 5 of O. XLVII of the Civil Procedure Code and an appeal lay against that order. JAGAT CHANDRA ACHARYA *v.* SHYAMA CHARAN BHATTACHARYA (1917) . . . . . **22 C. W. N. 550**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

———— **O. XLVII, r. 7**—*Review of judgment —Appeal from order granting of review—Grounds of appeal.* In an appeal under O. XLVII, r. 7, of the Code of Civil Procedure, 1908, from an order granting an application for review of judgment, the appellant is strictly limited to the grounds set forth in the rule. KHURSHED ALAM KHAN *v.* RAHMAT-ULLAH KHAN (1917).

I. L. R. 40 All. 68

———— **Sch. II, para. 14, cl.** (*c*)—*Award 'Illegal on the face of it,' meaning of—Patent illegality—Remittance to arbitrators for re-consideration, when permissible.* In a suit for partition and recovery of a share in the family properties, the defendants pleaded *inter alia* that the plaintiff was born blind and was therefore not entitled to any share under Hindu Law. After issues were framed the whole dispute was, by agreement of the parties, referred to arbitrators who, without deciding the question as to congenital blindness, passed an award to the effect that the plaintiff was entitled to a life-interest in one-fourth share subject to its becoming an absolute interest in case the plaintiff married. *Held,* on objection to the award, that the award was not so patently illegal as to come within the mischief of cl. (*c*) of paragraph 14 of the second schedule of the Civil Procedure Code, and that the award could not be remitted to the arbitrators for re-consideration. English and Indian cases reviewed. MADEPALLI VENKATASWAMI *v.* MADEPALLI SURANNA (1917).

I. L. R. 41 Mad. 1022

———— **Sch. II, s. 18—**

See ARBITRATION. **I. L. R. 41 Mad. 115**

CLAIM PROCEEDING.

See LIMITATION . **I. L. R. 45 Calc. 785**

CO-OPERATIVE SOCIETIES ACT (II OF 1912)

———— **s. 42** (*5*), (*6*)—*Order of liquidator declaring each member to be jointly and severally liable —Application for enforcement of order by civil Court—Appeal—Jurisdiction.* A society formed under the Co-operative Societies Act, 1912, went into liquidation. The liquidator having taken mortgages from the various persons who were members of the society and had received advances, proceeded to make an order, purporting to be passed under s. 42 (*b*) of the Act determining that each of the debtors should be jointly and severally liable, for the full amount of the several debts. This order was then taken to the Civil Court having local jurisdiction to be enforced under s. 42 (*5*) (*a*). *Held,* that the liquidator was probably wrong in passing the order which he did, but that, the order being one within s. 42 of the Act, the Civil Court had no option but to enforce it, and that no appeal lay to the District Judge nor a second appeal to the High Court. MATHURA PRASAD *v.* SHEOBALAK RAM (1917).

I. L. R 40 All. 89

CO-OPERATIVE SOCIETY.

———— **order passed by liquidator of—**

See CO-OPERATIVE SOCIETIES ACT (II OF 1912) s. 42 (*5*) AND (*6*).

I. L. R. 40 All. 89

CO-RESPONDENT.

———— **absence of—**

See DIVORCE . **I. L. R. 45 Calc. 525**

CO-SHARERS.

———— *Lease by majority of common land—Validity of lease—Lease, whether binding on minority—Suit by minority in ejectment —Remedy, whether limited to partition only—Form of decree.* A majority of co-sharers in samudayam or common land cannot grant a perpetual lease of the common property. Where a lease by some of the co-sharers is found to be invalid, the lessee is not entitled to be maintained in his possession, leaving it to those co-shares objecting to his lease to sue for partition as their only remedy. Where the lease is by some of the co-sharers to a person who is also a co-sharer, and the suit is by other co-sharers to eject the lessee, the proper decree to be passed is one declaring that the lease is not binding on the plaintiffs and directing recovery of possession by the latter on their own behalf and that of the other co-sharers. *Palaniappa Chetty* v. *Sreemath Debasikamony Pandara Sannadhi, I. L. R. 40 Mad. 709* applied. *Watson and Company* v. *Ramchund Dutt, I. L. R. 18 Calc. 10,* explained. RAGHAVACHARYULU *v.* GOVINDASARI (1918) . . . . **I. L. R. 41 Mad. 1068**

COLLECTOR.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 70, O. XXI, R. 72.

I. L. R. 42 Bom. 621

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 48.

I. L. R. 42 Bom. 125

———— **partition made by—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 54 . **I. L. R. 42 Bom. 689**

COLLUSION.

See EX PARTE DECREE.

I. L. R. 45 Calc. 920

COMMISSION.

———— **to examine witnesses—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXVI, R. 1.

I. L. R. 42 Bom. 136

COMMISSION AGENCY.

———— *Suit for recovery of amount due in respect of Commission agency—Practice and Procedure—Adjustment of accounts—Part of claim admitted by the defendant—Judgment on admissions—Liberty to plaintiff to prove balance of claim—Jurisdiction of Court—Discretionary powers—Civil Procedure Code (Act V of 1908), O. XII, r. 6.* Under O. XII, r. 6 of the Civil Procedure Code, the Court has jurisdiction to enter judgment for the amount admitted to be due from the defendants to the plaintiffs and it is in the Judge's discretion, having regard to the nature of the case and the allegations contained in the pleadings and the admission made in Court, whether he will allow the plaintiffs to proceed to prove the remainder of their claim. The discretion of the Judge is judicial, and an erroneous exercise thereof may be open to correction by a Court of Appeal, which, however, will be slow to interfere, unless either of the parties has been manifestly and unfairly prejudiced. PREMSUK DAS ASSARAM *v.* UDAIRAM GUNGABUX (1917).

I. L. R. 45 Calc. 138

COMMISSION AGENT.

See UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912) SS. 4, 6 . . **I. L. R. 40 All. 661**

COMMITMENT.

See CRIMINAL PROCEDURE CODE, SS. 476, 478 . . . **I. L. R. 40 All. 116**

See CRIMINAL PROCEDURE CODE, S. 478. **I. L. R. 40 All. 32**

COMMITTAL PROCEEDINGS.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 197, 210, 215. **I. L. R. 42 Bom. 172**

COMMON CARRIER.

——— *Right of consignee to insist on carrier weighing goods before delivery—Refusal to re-weigh, if refusal to deliver—Right of consignee to weigh and charge for shortage.* Defendant Steamer Company who were common carriers used to allow consignees of goods by their boats to inspect them before granting receipt in the delivery book and have them re-weighed (if so demanded) in case of suspicion of short weight and enter the short weight in the delivery book. The plaintiff's agent without making any such inspection paid the freight, signed the bill of lading and gave a clear receipt in the delivery book of the Company, but did not take actual delivery as he found some of the bags damaged. He then asked the Company's servant to re-weigh the goods and this being refused, did not take delivery. The plaintiff thereupon sued the Company for the price of the goods. *Held*, that the suit must fail as refusal to re-weigh did not amount to a refusal to deliver the goods. The mere fact of the plaintiff's agent accepting delivery and granting a clear receipt would not have taken away his right to compensation for proved loss of any portion of the consignment in transit or in the custody of the Company, the position of the latter being that of an insurer. He might weigh the goods himself and claim the price of the shortage in weight. RAMJASH AGARWALA *v.* INDIA GENERAL NAVIGATION AND RAILWAY CO., LD. (1917). **22 C. W. N. 310**

COMMUTATION.

See RENT . . **I. L. R. 45 Calc. 769**

COMPANIES ACT (VI OF 1882)—

——— **ss. 45, 58**—*Rectification of register of shareholders—Winding up—Contributory—Application for shares—Condition attached—Applicant unable to fulfil the condition—Applicant's liability as a contributory—Intention to become a member in præsenti or in futuro.* A manager of a Banking Company represented to the petitioner that if the petitioner took 400 preference shares he would be appointed a cashier in a new branch of the company. In pursuance of this contract, the petitioner applied for 100 only of preference shares. He paid the deposit money and was entered on the register of shareholders. Subsequently he found himself unable to take up the remaining 300 shares, he was not appointed a cashier in the branch office and the contract was treated as cancelled by the Directors. The petitioner having applied to have his name removed from the list of contributories in respect of preference shares. *Held*, that the petitioner's application for 100 preference shares was conditional and that he had no intention to become a member of the company when he applied for the shares until he was appointed a cashier in the branch office. He was, therefore, entitled to be struck off the register of preference shareholders and could not be called upon as a contributory on that account. *Roger's Case—In re Universal Banking Company, L. R. 3 Ch. 633*, followed. RAMANBHAI *v.* GHASHIRAM (1918). **I. L. R. 42 Bom. 595**

COMPANIES ACT (VI OF 1882)—*concld.*

——— **ss. 45, 58**—*concld.*

——— **s. 61, cl. (*g*)—**

See COMPANY . **I. L. R. 42 Bom. 264**

COMPANIES ACT (VII OF 1913).

——— **s. 32 (*4*)—**

See COMPANY . **I. L. R. 45 Calc. 490**

——— **ss. 76, 131, 134—**

See COMPANY . **I. L. R. 45 Calc. 486**

——— **ss. 104, cl. (*1*), (*b*)**—*"Share fully paid up otherwise than in cash," meaning of—Exchange of debenture not matured for share, whether a payment in cash for share.* Where in accordance with the terms of a debenture deed a company alltots to a debenture-holder a fully paid-up share in exchange for the surrender of a debenture deed *not then mature*, the share as allotted is one "fully paid up otherwise than in cash" within s. 104 (*1*) (*b*) of the Indian Companies Act (VII of 1913). *Spargo's Case, L. R. 8 Ch. App. 407*, distinguished. THODAPUZA RUBBER COMPANY *v.* THE REGISTRAR OF JOINT STOCK COMPANIES, MADRAS (1917). **I. L. R. 41 Mad. 307**

COMPANY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIII. **I. L. R. 41 Mad. 624**

See COMPANIES ACT (VI OF 1882), SS. 45, 58 . . **I. L. R. 42 Bom. 595**

1. ——— *Annual list of members, and summary—Omission of director to file same with Registrar—Liability of director under Indian Companies Act (VII of 1913) s. 32(4)—Place where defau icommitted—Jurisdiction of Presidency Magistrate to try offence—Criminal Procedure Code (Act V of 1898) ss. 182, 531.* The director of a company is liable under s. 32 (*4*) of the Indian Companies Act (VII of 1913) for default in filing a copy of the annual list of members and the summary prescribed therein, in the office of the Registrar of Joint Stock Companies at Calcutta. A Presidency Magistrate has jurisdiction to try such offence under s. 182 of the Criminal Procedure Code, and even if not, s. 531 cures the defect. DEBENDRA NATH DAS GUPTA *v.* REGISTRAR OF JOINT STOCK COMPANIES (1917). **I. L. R. 45 Calc. 490**

2. ——— ——— *Balance sheet of a company—Omission of director to call annual general meeting and to place before it a properly audited balance sheet—Liability of director for default in filing copy of the same—Indian Companies Act (VII of 1913), ss. 76, 131, 134—Jurisdiction.* The director of a company is liable, under s. 134(*4*) of the Indian Companies Act (VII of 1913), for default in filing a copy of the annual balance sheet duly prepared and audited, in the office of the Registrar of Joint Stock Companies at Calcutta, and cannot plead, in answer to a charge under

COMPANY—*contd.*

s. 134, his own omission to call the annual general meeting of the company required by s. 76, and to place before it such balance sheet. *Park* v. *Lawton*, [*1911*] *1 K. B. 588*, referred to. The offence under s. 134 (*4*) is triable in Calcutta, whether or not, if the prosecution had been laid under s. 76 or 131 of the Act, the Presidency Magistrate might have had jurisdiction to try the offences committed under the latter sections. DEBENDRA NATH DAS GUPTA *v.* REGISTRAR OF JOINT STOCK COMPANIES (1917) . . . . **I. L. R. 45 Calc. 486**

3. ——— *Banking Company—Sale of shares through Company—Shares unsold through the misconduct of the Managing Director of the Company—Misrepresentation by the Managing Director that the shares were sold—Money paid to the share-holder as the price of the shares—Company going into liquidation—Share-holder as the registered owner of shares, placed on list A of contributories—Payment of calls in liquidation by the share-holder—Suit by the share-holder to recover back the amount of calls paid—The Indian Companies Act (VI of 1882), s. 61, cl. (g).* Plaintiff No. 1, through his nominees, plaint ffs Nos. 2 to 4, was the owner of 161 shares in the Indian Specie Bank, Limited. In April 1913 upon instructions from the plaintiff No. 1, the share certificates and blank transfers executed by the nominal registered holders of the shares were handed to the Managing Director of the Specie Bank who undertook to sell the shares on commission. In May 1913, the Managing Director without selling the shares paid in respect of them a sum of Rs. 10,500, being approximately the equivalent of the net sale-proceeds of the shares at Rs. 66 per share, and he falsely represented to the plaintiffs that the shares had been sold at that figure. In December 1913, the Specie Bank went into liquidation. Plaintiffs Nos. 2 to 4 were thereafter placed upon list A of contributories in respect of the shares standing in their name on behalf of plaintiff No. 1 on the ground that they remained registered share-holders. In the liquidation proceedings, plaintiff No. 1 was obliged to pay the amount of calls made aggregating in all Rs. 8,050 with interest up to payment amounting to Rs. 219. Plaintiff No. 1 subsequently filed this suit to recover back the sums paid by him on the ground that the Managing Director in the course of his employment was guilty of neglect and misconduct towards the plaintiffs in not selling the said shares, and that the direct consequence of such neglect and misconduct had been that plaintiffs Nos. 2 to 4 were placed upon list A instead of list B with the result that plaintiff No. 1 had to pay the calls on the shares. *Held,* that the plaintiffs had no cause of action, inasmuch as share-holders of a company contract to contribute a certain amount to be applied in payment of the debts and liabilities of the Company, and it is inconsistent with their position as share-holders, where they remain as such, to claim back any of that money. *Houldsworth* v. *City of Glasgow Bank, 5 App. Cas. 317*, and *In re Addlestone Linoleum Company, 37 Ch. D. 191, 198*, referred to. NAROTTAM MORARJI *v.* THE INDIAN SPECIE BANK, LIMITED, IN LIQUIDATION (1917) . . **I. L. R. 42 Bom. 264**

4. ——— *Fixed preference and ordinary shareholders—Preference share-holders liable to pay income-tax on their dividends unless otherwise provided—The Income-Tax Act (II of 1886), sections 4, 11, 12, 49, Schedule II, Part II—The Income-Tax Amendment Act (V of 1916)—The English Income-Tax Act of 1842, ss. 40, 54, 100.* As between fixed preference and ordinary share-holders in a joint stock company the former are not entitled to have their preference dividends paid free of income-tax in a case where there are no express words to that effect in the contract regulating the rights of parties. Under the Indian Acts as well as the English Acts the income-tax is in effect paid on behalf of the share-holder by the company. In a narrow technical sense it may be said that the company being a separate legal entity the net profits belong to the company and not to the share-holders, at any rate until a dividend has been actually declared. But in effect these net profits do belong to the share-holders. If therefore any sum has to be paid out of these net profits to the Crown for tax, in effect it is the share-holders who have to pay. The provisions of the Income-Tax Act as to assessment on and payment by the company are in effect mere machinery for the collection of the tax, and the matter is made much clearer if one sweepers away this machinery and regards the matter as between the Crown and the subject. *Attorney-General* v. *Ashton Gas Company*, [*1904*] *2 Ch. 621*, referred to. PURSHOTTUMDAS HARKISONDAS *v.* THE CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING COMPANY, LIMITED (1917).

I. L. R. 42 Bom. 579

5. ——— *Mortgage by a Company—Second mortgage by a Company—Suit on first mortgage against Company and second mortgagee—Company compulsorily wound up pending the mortgage suit—Liquidators' obtaining sanction to create charges over assets to meet costs of litigation—Liquidators' application opposed by first and second mortgagee—Charge created by the liquidators in favour of the first mortgagee—Sale of mortgaged property in the mortgage suit—Holder of charge claiming priority over the second mortgagee for moneys charged—Holder of charge postponed until the claims of second mortgagee satisfied—Transfer of Property Act (IV of 1882), ss. 2 (d) and 52—Lis pendens—Transfer effected under another Court's order pending suit—Sanction not an order capable of execution—Estoppel.* The plaintiff, the first mortgagee of a limited liability company, instituted a suit in the High Court at Bombay to enforce his mortgage against the mortgagor, defendant No. 1, and second mortgagees of the company, defendant No. 2. During the prosecution of the suit the affairs of the first defendant company were ordered to be wound up at the instance of one of its creditors and the liquidation proceedings were transferred to the District Court at Poona where the company had its registered office. The plaintiff, however, obtained leave from the High Court to proceed with his mortgage suit in Bombay against the company in liquidation. Subsequently, the liquidators of the company applied to the Poona District Court in which the liquidation proceedings were going on for sanction to raise Rs. 25,000 for costs of litigation on the security of the assets of the company except the goods pledged to the plaintiff. The plaintiff and the second mortgagees contended that the sanction should not be given so as to affect their security as the assets would not include the interests in the property held by the mortgagees. The sanction was, however, given by the District Judge to the liquidators who,

COMPANY—*contd.*

thereupon, executed two documents of charge for Rs. 10,000, each in favour of the plaintiff reciting the decision of the District Judge and agreeing that upon the sale of the mortgaged premises the sums so charged and all interest due thereon should be payable out of the sale proceeds in priority to all other payments. In the mortgage suit an order by consent was passed for sale of the mortgaged properties by the liquidators reserving the contention of all the parties. The surplus sale proceeds in the hands of the liquidators after satisfaction of the plaintiff's mortgage claim in the suit amounted to Rs. 81,000 or thereabouts. The plaintiff claimed by virtue of the documents of charge to be paid the amount of Rs. 20.000 secured thereby in priority to the claim of the second mortgagees, contending further that as the latter failed to appeal against the decision of the District Judge they were estopped from disputing the same. *Held*, overruling the plaintiff's contention, (i) that the second mortgagees were as parties to the pending mortgage suit protected by s. 52 of the Transfer of Property Act against any postponement of their security by the charges created *pendente lite* by the liquidators, for the authority of the District Court in Poona could not affect orders in a pending suit in the Bombay High Court. (ii) that the charges created by the liquidators were not transfers *in execution of* an order of a Court within the scope of s. 2 (*d*) of the Transfer of Property Act, inasmuch as the Poona Court's sanction was not an order capable of execution but merely an authority to the liquidators to act in a certain manner if occasion should arise. MOTILAL SHIVLAL *v.* THE POONA COTTON AND SILK MANUFACTURING CO., LIMITED (1917) . . **I. L. R. 42 Bom. 215**

6. ——————— *Pledge of shares in a Company—Shares transferred to the name of the pledgee in the register of the Company—Shares not fully paid up—Compulsory liquidation of the Company—Payment of calls as contributory by pledgee of shares—Pledgee not entitled to recover calls paid on the footing of an indemnity—Pledgee paying calls not a trustee for the pledgor—Contract—Agent and Principal.* From March to October 1913, the plaintiff Bank advanced to B, the agent of the undisclosed principal defendant No. 1, various sums aggregating Rs. 1,74,200 on the security of 3,605 shares, of the Indian Specie Bank, B undertaking to maintain a margin of Rs. 15 per share. The shares deposited by B were transferred to the plaintiff Bank's name on the share register of the Indian Specie Bank, and the dividends when received by the plaintiff Bank were credited to the loan account of B. In September 1913, the Indian Specie Bank shares began to fall. On 7th October 1913, B provided further securities as margin which realised about Rs. 20,000, but thereafter failed to provide any further margin and eventually 181 shares were sold by the plaintiff Bank of which 161 had been transferred to the purchaser's name before December 1913, when a winding-up order was made for the compulsory liquidation of the Indian Specie Bank. In the liquidation the plaintiff Bank had been placed on the A list of contributories for 3,444 shares and on the B list for 161 shares for the shares deposited by B. On the 20th February 1914 B was adjudicated insolvent. Subsequently in pursuance of the call made by the Official Liquidator of the Indian Specie Bank, the plaintiff Bank paid Rs. 50 per share in respect of 3,444 shares standing in its name. The plaintiffs sued to recover

COMPANY—*concld.*

from the 1st defendant (1) Rs. 1,57,665-13-7. and interest thereon in respect of the advances made by them, (2) Rs. 1,72,200 being the amount of calls paid by them as contributories, and interest thereon and (3) an indemnity for any claim which might be made against them in respect of 161 shares. The Official Assignee as the assignee of the estate and effects of B was made a formal party, being defendant No. 2. The trial Court decreed the entire claim of the plaintiffs. *Held* on appeal: (i) That the plaintiff's claim must be limited to a decree for the sums advanced by them, interest and costs. (ii) That the plaintiffs were not entitled to be indemnified for the amount of calls paid or to be paid by them as contributories inasmuch as the forced payment of calls by them as the registered holder of the shares upon a compulsory liquidation could not be regarded as an expenditure for the preservation of the security, nor were the plaintiffs as mortgagees the trustees for the mortgagor at the time of paying such calls. *Phene* v. *Gillan, 5 Hare 1, 10,* referred to. BIRDICHAND JIVRAJ *v.* THE STANDARD BANK, LIMITED (1916).
I. L. R. 42 Bom. 159

7. ——————— *Winding up—Contributory—Applications for allotment of shares made by alleged contributory under conditions which were not carried out by the Company.* A, who was the holder of fifty shares in a limited liability Company, entered into an agreement with the Company through its managing director to take 150 more shares, on the conditions (*a*) that he was to be appointed a "terminal director" of the Company and (*b*) that the business of the company was to be transferred from Meerut, where it had been formed, to Saharanpur. The 150 shares were allotted to A, but he never paid the allotment money, and, though the business of the Company was, nominally at least, transferred to Saharanpur, A was never appointed a director. Shortly after this allotment the Company went into liquidation. *Held*, that A could not be made a contributory in respect of the 150 shares which he had offered conditionally to take. *The London and Provincial Provident Association, Ld., In re Mogridge, 57 L. J. Ch. 932,* referred to. POWELL *v.* SEN (1917).
I. L. R. 40 All. 45

COMPENSATION.

See CRIMINAL PROCEDURE CODE, S. 250.
I. L R. 40 All. 79

See EJECTMENT SUIT, IN.
I. L. R. 41 Mad. 641

See LAND ACQUISITION ACT (I OF 1894), SS. 23, 49 . **I. L. R. 40 All. 367**

See PENAL CODE (ACT XLV OF 1860), S. 250 . . **I. L. R. 40 All. 610**

See PENAL CODE (ACT XLV OF 1860), S. 494 . . **I. L. R. 40 All. 615**

COMPLAINT.

See CRIMINAL PROCEDURE CODE, S. 4.
I. L. R. 40 All. 641

See CRIMINAL PROCEDURE CODE, SS. 303, 437 . . **I. L. R. 40 All. 138**

See PENAL CODE (ACT XLV OF 1860), S. 120B . . **I. L. R. 40 All. 41**

COMPROMISE.

See STAMP ACT (II OF 1899), S. 62, SCH. I, ART 5 . . **I. L. R. 40 All. 19**

COMPROMISE—*concld.*

——— by female owner—

See HINDU LAW—REVERSIONER.
I. L. R. 45 Calc. 590

——— power of vakil to enter into—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3; S. 96, CL. (5).
I. L. R. 41 Mad. 233

——— recording of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3; S. 96, CL. (5).
I. L. R. 41 Mad. 233

1. ——— *Petition of compromise presented to the Magistrate while writing judgment—Duty of Magistrate to accept, and give effect to, the petition—Criminal Procedure Code (Act V of 1898), s. 345.* Under s. 345 of the Criminal Procedure Code, a case may be compounded at any time before sentence is pronounced. A Magistrate, therefore, cannot refuse to accept a petition of compromise presented to him whilst he is writing the judgment. ASLAM MEAH *v.* EMPEROR (1917).
I. L. R. 45 Calc. 816

2. ——— *Compromise of a claim—Consideration—Claim must be bonâ fide—Mimanshapatra obtained from guardian of infant by setting up a false will.* A died in 1902 leaving an adopted son B and a daughter P who was married to one G. B died in 1906, leaving as his heir P's son K then an infant, only two or three months old. About this time certain agnates of A set up a will by A under which they claimed A's estate as from the death of B, and G and they purported to settle the dispute by *mimanshapatra* whereby G, on his son's behalf, gave up certain portions of the estate left by B to the other party. On the validity of the *mimanshapatra* being challenged by B on behalf of her son K in a suit for partition brought by her against the other party to the deed. *Held*, that though the latter could be expected and were not obliged to prove the will in solemn form in the present litigation, it was necessary for them to show that there was a will and that upon that will they had a claim which was made honestly and in good faith. *Held*, on the evidence, that there was no will, and the claim put forward on its basis was not honest or *bonâ fide* but merely a sham claim with a view to inducing G to give up some of the infant's property in their favour. That upon the question of the validity of the *mimanshapatra*, the position of the infant was different from what would have been G's position had he executed the deed for himself. KRISHNA CHANDRA DUTTA ROY *v.* HEMAJA SANKAR NANDI MAZUMDAR (1917) . . **22 C. W. N. 463**

COMPUTATION OF TIME.

See CONTRACT FOR SALE.
I. L. R. 45 Calc. 481

CONCILIATOR'S CERTIFICATE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 48.
I. L. R. 42 Bom. 367

CONDEMNATION OF VESSEL.

See SALE OF GOODS.
I. L. R. 45 Calc. 28

CONFESSION.

See EVIDENCE ACT (I OF 1872), S. 26.
I. L. R. 42 Bom. 1

CONFESSION—*concld.*

See MISDIRECTION.
I. L. R. 45 Calc. 557

See UNRECORDED CONFESSION.
I. L. R. 45 Calc. 557

——— *Allegation of illtreatment and inducement to extort confession—Onus of proof.* Where an accused when retracting a confession alleged ill-treatment and inducement by the Police to extort the confession, the onus is on him to prove such ill-treatment and inducement. KING-EMPEROR *v.* KABILI KATONI (1918).
22 C. W. N. 809

CONGENITAL BLINDNESS.

See HINDU LAW—INHERITANCE.
I. L. R. 45 Calc. 17

CONSENT.

See PENAL CODE (ACT XLV OF 1860) SS. 366, 360, 90.
I. L. R. 42 Bom. 391

CONSIDERATION.

See C. I. F. CONTRACTS.
I. L. R. 42 Bom. 473

——— unlawful—

See CONTRACT ACT (IX OF 1872), S. 24.
I. L. R. 42 Bom. 339

——— *Mortgage—Legal consideration—Contract Act (IX of 1872), s. 2, cl. (d).* Where A executed a mortgage in favour of X in 1884, and in consideration of X not enforcing the same and, in substitution therefor, A, along with B, C, and D executed a fresh mortgage in 1893, in favour of X, and on X suing to enforce the later mortgage the Court of first instance dismissed the suit on the ground that that there was no legal consideration: *Held*, that the mortgage of 1893, which replaced that of 1884, was for legal consideration. *Held*, further, that it was not necessary that the promisor should benefit by the consideration, it was sufficient if the promisee did some act from which a third person was benefited, and which he would not have done but for the promise. *Hurkissen Dass Serowgee* v. *Nibaran Chander Banerjee, 6 C. W. N. 27, Alhusen* v. *Prest, 6 Exch. Rep. 720, Bailey* v. *Croft, 4 Taunt, 611, Haig* v. *Brooks, 10 A. & E. 309*, referred to. FANINDRA NARAIN ROY *v.* KACHEMAN BIBI (1917).
I. L. R. 45 Calc. 774

CONSPIRACY.

See PENAL CODE (ACT XLV OF 1860), S. 120B . . **I. L. R. 40 All. 41**

CONSTRUCTION.

See CONTRACT FOR SALE.
I. L. R. 45 Calc. 481

CONSTRUCTION OF DOCUMENT.

See CONTRACT . **I. L. R. 42 Bom. 344**

See HINDU LAW—GIFT.
I. L. R. 40 All. 575

CONTEMPT.

See CIVIL AND CRIMINAL CONTEMPT.
I. L. R. 45 Calc. 169

CONTEMPT OF COURT.

——— *Civil and Criminal Contempt—Court of Record—Prosecution by Judges—Trial by the same Judges—Jurisdiction—Standard*

CONTEMPT OF COURT—*concld.*

of proof—Fair comment—Publication—Printer, liability of—Manager and Directors of Newspaper Company, liability of—Evidence Act (I of 1872), ss. 3, 74 (2)—Editor, registration of. Where a newspaper unlawfully published articles scandalising the High Court and the Chief Justice in his administration thereof, by allegations implying that the Chief Justice had constituted a packed Bench, the articles having a tendency to prejudice the parties and interfere with the administration of justice. *Held per* CURIAM (MOOKERJEE, *J.*, discussing whether contempt proceedings were civil or criminal), that the Judges had jurisdiction to hear the Rule though issued of their own motion: that the articles constituted a contempt of Court: that the printer of the newspaper was liable therefor: that there was no sufficient evidence of the existence of an editor, that the *primâ facie* case of responsibility for the publication against two of the directors and the managers of the company owing the newspaper had been met, and that in the case of the third director, although the facts raised a case of strong suspicion against him it was just possible he might not be responsible for the publication and that he should be given the benefit of the doubt. The Rule was therefore made absolute against the printer, who was fined, and discharged as regards the other respondents. The Legislature should provide for the registration of the editor or the person really responsible for the contents of a newspaper. *Per* WOODROFFE, *J.* There is only one Standard of Proof applicable alike to civil and criminal trials, *vide* definition of "proved" and "disproved" in s. 3 of the Evidence Act. The word record includes a collection of private documents. *The Queen* v. *Gray, [1900] 2 Q. B. 36, Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court at Fort William in Bengal, I. L. R. 10 Calc. 109; L. R. 10 I. A. 171, Legal Remembrancer* v. *Mati Lal Ghose and Others, I. L. R. 41 Calc. 173, McLeod* v. *St. Aubyn, [1899] A. C. 549, The American Exchange in Europe Case, 58 L. J. Ch. 706, St. James Evening Post Case, 2 Atk. 469, Daw* v. *Eley, L. R. 7 Eq. 49, In re Banks and Fenwick, 26 C. L. J. 401, Cheshire* v. *Strauss, 12 T. L. R. 291, Reg.* v. *Judd, 37 W. R. (Eng.) 143, Ex parte Green 7 T. L. R. 411, Weston* v. *Peary Mohan Dass, I. L. R. 40 Calc. 898,* referred to. MOTI LAL GHOSE AND OTHERS, *In re* (1917). **I. L. R. 45 Calc. 169**

CONTENTIOUS MATTER.

See PARTIES . **I. L. R. 45 Calc. 862**

CONTRACT.

See PESHKOSH . **I. L. R. 45 Calc. 866**

——— **induced by threat to commit suicide—**

See CONTRACT ACT (IX OF 1872). SS. 15, 16 . . . **I. L. R. 41 Mad. 33**

——— **suit for specific performance of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 113. **I. L. R. 41 Mad. 23**

——— **under C. I. F. terms—**

See SALE OF GOODS. **I. L. R. 42 Bom. 16**

1. ——————— *Breach of contract—Measure of damages—Custom of the Bombay Silver Market—Shroffs, ostensible buyers and sellers—Shroffs acting for outside principals work either for kacchi or for pakki adat—Kacchi adat distinguished from pakki adat—Principal of kacchi adatia may sue in his own name for damage or breach of contract without impleading the kaccha adatia.* On the 13th of July 1914, the plaintiff, a merchant, in the name of his *kachha adatia* and agent H and acting by his broker B entered into a contract whereby H agreed to buy and the defendants to sell 50 bars of silver at Rs. 75-5-0 per 100 tolas for the ensuing *Shravan, i.e.*, August *vaida*. The contract was entered into subject to the rules of the Panch Shroff Association whereby it was the duty of the defendants to tender a delivery order by the 12th of August 1914. On the 10th of August, the plaintiff tendered to H the price of bars and on the 11th H asked for a delivery order. The defendants, failed to give a delivery order by the 12th August. The plaintiff thereupon sued the defendants without making H a party, for damages for breach of contract at the rate of Rs. 3-3-0 per 100 tolas, which was the difference in price between the contract rate and the rate prevailing in the market on the 13th of August. The defendants pleaded a custom of the silver market whereby the selling Shroffs were not personally liable to the principal of the buying *adatia*. The defendants without prejudice further stated that the rate of Rs. 76-12-0 must be taken to be the highest buying and selling rate with reference to which damages could be assessed, at the Shroffs at a special meeting held on the 16th August 1914 resolved that where a party was not able to give delivery, silver bars could be bought and sold at Rs. 76-12-0. *Held*, (i) that the evidence called by the defendants fell far short of proving the custom alleged; (ii) that if at the date of breach damages were recoverable by the usual and recognised measure, it did not matter whether the *adatia* or the principal sued; (iii) that the ordinary law of principal and agent applied, and the plaintiff was entitled under the contract to claim the difference in price between the contract rate and the market rate at the time of breach. It was not disputed at the trial that a custom of the Bombay Silver Market for forward contracts was that only Shroffs were the ostensible buyers and sellers though Shroffs might have and often did have outside principals for whom they were acting. The Shroffs, when acting for principals, worked sometimes for *kacchi adat* and sometimes for *pakki adat*. In the case of *kacchi adat* the *adatia* Shroff guaranteed the performance of the contract to the other Shroff, but did not guarantee its performance to his own principal. In the case of *pakki adat* the *adatia* Shroff who then acted for a higher commission was liable as a principal both to his own employer and to the other Shroff. ABRAHAM E.J. ABRAHAM *v.* SARUPCHAND (1917) . . . . **I. L. R. 42 Bom. 224**

2. ——————— *Breach of—Suit for damages—Contract after outbreak of war to supply enemy goods out of stock in a particular ship—Royal Proclamation, porhibiting contract as illegal, effect of—Capture and condemnation of steamer and goods by Prize Court, effect of, on contract—Purchase of goods from Prize Court by defendant and bringing goods to place of performance by other steamers, effect of—Contract to supply goods of a certain description and quality—Supply of inferior goods, effect of.* A contract made on the 25th August 1914, after the outbreak of war with Germany on the

CONTRACT—*contd.*

CONTRACT—*contd.*

4th August 1914, to supply German dyes expected to arrive by certain steamers believed to have started on their voyage from Germany before the war, is unenforceable, if under the contract the defendant was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war and the ship and the dyes therein were as a fact seized during the voyage and condemned as prize by a Prize Court. *Held* further, (*a*) that the effect of the Royal Proclamation of 9th September 1914, prohibiting trading with the enemy and in enemy goods as illegal, was to render the further performance of the contract illegal and to put an end to the contract; (*b*) that the condemnation of the goods by the Prize Court related back to the date of seizure and divested the owners of the goods as from the date of seizure; (*c*) that the fact that the defendants for their own convenience bought the goods from the Prize Court and brought them to the place of performance is immaterial as the goods ceased to be goods consigned to the defendants; and (*d*) that a contract to supply dyes of 40 per cent. strength on arrival of certain steamers is not enforceable when the steamers arrive with dyes of inferior description and quality, *viz.*, 16 per cent. strength. *Hale* v. *Rawson*, *27 L. J. C. P. 189*, distinguished. *Arnhold Karberg & Co.* v. *Blythe Green Jourdain & Co.*, *[1916] 1 K. B. 495*, *The Odessa*, *[1916] A. C. 153*, and *The Zamora*, *[1916] 2 A. C. 77.* followed. ABDUL RAZACK *v.* KHANDI ROW (1917) . . . . **I. L. R. 41 Mad. 225**

3. ———— ———— *Contract Act (IX of 1872), ss. 65, 73—Breach of promise to marry, parties being Konkani Mahomedans—Suit for damages for breach of promise to marry as under English law not maintainable under Mahomedan law.* Under Mahomedan law in a suit for breach of promise to marry the plaintiff cannot recover the damages peculiar to an action for breach of promise under the English law. The action under the English law though based upon the hypothesis of a broken contract is attended with some of the special consequences of a personal wrong and damages may be given of a vindictive and uncertain kind not merely to repay the plaintiff for temporal loss, but to punish the defendant in an exemplary manner. This anomaly should not be introduced in the case of Mahomedans whose views of the relationship of the married parties to one another are so different to those of persons governed by the English law. ABDUL RAZAK *v.* MAHOMED HUSSEIN (1916). . . **I. L. R. 42 Bom. 499**

4. ———— *Contract to sell property by certificated guardian on behalf of minor, with Court's leave—Specific performance.* Where a guardian of minors appointed by Court, with the Court's sanction, agreed to sell the minor's property to A at a price which was above that fixed by the Court. *Held*, that a suit by A for specific performance of the contract was maintainable INNATUNNESSA BIBI *v.* JANAKI NATH SARKAR (1917). **22 C. W. N. 477**

5. ———— ———— *Enforcement of contract by stranger thereto—Agreement between vendor and purchaser that the latter will pay the former's debt to a third person out of consideration money retained with him, if may be endorced by vendor's creditor.* The first two defendants borrowed on a promissory note a sum of money from the plaintiff; they thereafter transferred their

CONTRACT—*contd.*

properties to the third defendant who executed an agreement in favour of his vendors expressly undertaking to pay to the plaintiff his dues out of the consideration money retained in his hands. The plaintiff sued his debtors as also the third defendant for his money. *Held*, that the plaintiff was entitled to enforce the agreement made between the third defendant and his vendors. The principle underlying the decision in *Debnarain Dutta* v. *Ramsadhan Mandal*, *I. L. R. 41 Calc. 137*; s. c. *17 C. W. N. 1143* applied to the case and the distinction that the arrangement between the first two defendants and the third defendant was never brought to the notice of the plaintiff was not material. DWARKA NATH ASH *v.* PRIYA NATH MALKI (1916) . . **22 C. W. N. 279**

6. ———— *Interpretation—Implied term of contract—Compensation, assessment of.* Plaintiffs contracted to supply labour for reclamation work undertaken by the defendant Trust. The agreement *inter alia* provided that the plaintiffs were to find the necessary labour for filling and emptying waggons of sand and were to be paid by measurement of the area reclaimed, having, before commencing work, satisfied themselves as to the correctness of the depths shown on the sections of the ground. It recited that the defendant Trust was at the time engaged in putting rubble protection to enclose the area to be reclaimed and this would be in progress probably when the works would be commenced and it was stipulated that the plaintiffs were not to make any claim for alleged or actual loss of material being washed away during the progress of the work and when quoting their rate for the labour in filling and emptying, it must include all and every such contingency as loss in bulk through washing or spreading by the sea, sinking and settlement or leaking or blowing out of the waggons during their transit from the sandhills to the site of the reclamation and that the plaintiffs would be paid strictly in accordance with the work when actually done on the sections of the ground at the completion of the work and no allowance whatever as stated in the previous clause would be entertained for sinking, washing away, etc. The trial Judge held that the plans and sections added an implied term to this contract that the defendant Trust was to supply the protection actually shown on the plans and sections, whilst the Appeal Court was of opinion that the implied covenant was to supply an "adequate protection," the inadequacy being proved by the mere fact of the discrepancy between what they considered the proved waggon-loads deposited and the proved amount measured. *Held*, by the Judicial Committee, that assuming without deciding that the contract had an implied condition, that condition was only to execute the protection as shown on the plans. KARACHI PORT TRUST *v.* J. MACKENZIE DAVIDSON (1918). **22 C. W. N. 961**

7. ———— *Sale—Sale on condition that the vendor or his descendants should have the right to repurchase—Nature of the right reserved, whether personal or assignable—Specific Relief Act (I of 1877), s. 23—Construction of document—Second Appeal—Civil Procedure Code (Act V of 1908), s. 100.* One V obtained a decree against G. G being unable to satisfy the decretal debt sold his land to V in 1903 on condition that after the lapse of ten years G or his descendants should have the

CONTRACT—*contd.*

right to repurchase it within two years for the same price for which the land was sold. After the death of G, his son was his only descendant and on his death his mother took as heir. She sold the rights reserved to G and his descendants in the sale deed to one M who in turn sold them to the plaintiffs. A suit having been brought to recover possession of the land sold by G, the question was raised whether on the terms of the sale deed of 1903 the intention of the parties was that the right reserved was to be a right personal to G and his descendants or a right which he could assign to any other person. *Held*, on the construction of the sale deed, that the intention of the parties was that the assignees outside the family would not enforce the contract specifically. It was a case of personal quality mentioned in s. 23 of the Specific Relief Act 1877, as the personal quality need not necessarily be restricted to particular skill or learining but might include anything peculiar to a man or his descendants which would entitle them to special favour at the hands of the other contracting parties. In second appeal the High Court will have as good a right as the lower appellate Court to put its own construction upon a document as a whole in order to arrive at the intention of the parties thereto. VITHOBA MADHAV *v.* MADHAV DAMODAR (1918).

I. L. R. 42 Bom. 344

8. ——— *Third party's right to sue on—Limitation Act (IX of 1908), s. 18, arts. 62, 115 and 116—Suit for rent by the third party to contract—Date from which limitation begins.* Contrary to his undertaking to redeem a prior *kanam* and to collect and pay the *jenmi*, arrears of rent due by the *kanamdar* a *melkanamdar* assigned his rights and liabilities under the *melkanam* to the *kanamdar* by the registered deed in 1909 without the knowledge of the *jenmi* and thus enabled the *kanamdar* to continue in possession for a further period. The *jenmi* who came to know of the assignment in 1912 at once recognized it, demanded arrears of rent from the *kanamdar* and brought the suit in 1913 against the *kanamdar* and the *melkanamdar* for all the rent due during the periods of the *kanam* and the *melkanam*. *Held* by WALLIS, *C.J.*, and KUMARASWAMI SASTRIYAR, *J.* (BAKEWELL, *J.*, dissenting) that (*a*) the *jenmi* was entitled to recover from the *kanamdar* the arrears of rent as moneys had and received to the plaintiff's use and that the suit was not barred by limitation by reason of Art. 62, and s. 18 of the Limitation Act. *Per* WALLIS, *C.J.* and BAKEWELL, *J.* The *jenmi* was not entitled to sue on the assignment to which he was not a party. *Per* KUMARASWAMI SASTRIYAR, *J.* The *jenmi* was entitled to sue on it. *Jamna Das* v. *Ram Autar Pande, I. L. R. 34 All. 63*, and *Tweddle* v. *Atkinson, 30 Ch. D. 57*, and other cases considered. ITTI PANKU MENON *v.* DHARMAN ACHAN (1917) **I. L. R. 41 Mad. 488**

9. ——— *To purchase and ship goods—C. I. F. contracts nature of—C. I. F. contract with ordinary vendor and with commission agent, difference between—Outbreak of war, effect of—Liability of vendor and vendee—Special terms as to risk in contract, effect of—Indian Contract Act, s. 222.* E. & Co., who were commission agents, entered into a contract with the defendants under which they undertook to purchase and ship certain goods 'on account and risk' of the defendants, and did ship them under a C. I. F. contract on board a German ship. Owing to the outbreak of war during their transit, the goods did not arrive

CONTRACT—*concld.*

at their destination until long after due time. On defendants' refusal to accept the goods, they were sold by the plaintiff, the liquidator of E. & Co., who sued the defendants for damages for breach of contract; the defendants denied the liability. *Held*, that E. & Co. being commission agents of the defendants, were entitled, both under the special terms of the contract and under the general law of agency embodied in s. 222 of the Indian Contract Act, to recover damages for breach of contract. In an ordinary C. I. F. contract between vendors and vendees, the tender of a bill of lading after the contract of affreightment has been dissolved by the outbreak of war is not such a tender as the vendees are bound to accept and they are not bound to pay for the goods. *Arnhold Karberg & Co.* v. *Blythe Green Jourdain & Co., [1916] 1 K. B. 495.* followed. Where, however, goods are purchased from a commission agent, though he is regarded for some purposes as a principal as any other vendor under a C. I. F. contract, yet the relationship of principal and agent still subsists for all other purposes; the true principle is that the assimilation is only to be carried so far as is necessary to give necessary efficacy to the transaction. *Ireland* v. *Livingston, L. R. 5 H. L. 395 Cassuboglou* v. *Gibb, 11 Q. B. D. 797, Williamson* v. *Barbour, 9 Ch. D. 529*, referred to. HARRY MEREDITH *v.* V. K. ABDULA SAHIB (1918).

I. L. R. 41 Mad. 1060

10. ——— *Wagering Contract—Pukka Adatia business in Bombay, if necessarily wagering transaction—Speculation and wagering distinguished. Pukka Adatia* dealings are well established as a legitimate mode of conducting commercial business in the Bombay market. Speculation does not necessarily involve a contract by way of wager and to constitute such a contract a common intention to wager is essential. BHAGWANDAS PARASRAM *v.* BURJORJI RUTTONJI BOMANJI (1917) . . . . . **22 C. W. N. 625**

I. L. R. 42 Bom. 373

CONTRACT ACT (IX OF 1872).

——— **s. 2, cl.** (*d*)—

See CONSIDERATION.

I. L. R. 45 Calc. 774

——— **ss. 15, 16**—*Threat by a stranger to a contract, to commit suicide, held out to his wife and son and inducing them to enter into contract on that account—Validity of contract—Coercion and undue influence—Suicide whether 'an act forbidden by Indian Penal Code'—'Prejudice' in s. 15, meaning of.* By a threat of suicide, a Hindu induced his wife and son to execute a release deed in favour of his brother in respect of certain properties which they claimed as their own. *Held* by WALLIS, *C.J.*, and SESHAGIRI AYYAR, *J.* (OLDFIELD, *J.*, dissenting) that the threat of suicide amounted to coercion within s. 15 of the Indian Contract Act, and that the release deed was therefore voidable. *Per* WALLIS, *C.J.*, and SESHAGIRI AYYAR, *J.* Suicide is an 'act forbidden by the Indian Penal Code' and suicide by a Hindu if actually committed, will be an act not only to his own prejudice but also 'to the prejudice' of his wife and son with s. 15. *Per* OLDFIELD, *J.* Suicide is not 'an act forbidden by the Indian Penal Code, directly or inferentially; and hence the threat did not amount to coercion and the release was not voidable on that account. As the person who held out the threat was not a party to the release deed,

CONTRACT ACT (IX OF 1872)—*contd.*

———— **ss. 15, 16**—*concld.*

it was not voidable on account of "undue influence" within s. 16 of the Indian Contract Act. AMMIRAJU *v.* SESHAMMA (1917).

I. L. R. 41 Mad. 33

———— **s. 23**—*Agreement to pay money to the vakil's clerk for giving special attention to a case, whether opposed to public policy.* An agreement by which a litigant binds himself to pay his vakil's clerk a certain amount for giving special attention to his legal business which his vakil was bound to see to in consideration of his fee, is opposed to public policy and is void and unenforceable. *Ex parte, Cotton 9 Beav. 107*, referred to. SURYANARAYANA *v.* SUBBAYYA (1917).

I. L. R. 41 Mad. 471

———— **ss. 23, 65**—*Marriage brocage agreement—Money paid under, when recoverable—Principle of English Law, applicability of—Transfer, ostensible or real, whether a proper test.* A marriage brocage agreement is unlawful and void *ab initio* and brokerage paid thereunder is recoverable if the agreement or substantial part of it is not performed. Such an agreement does not fall within s. 65 of the Contract Act and the rule to be applied is the rule of English Law. *Taylor* v. *Bowers, 1 Q. B. D. 291, Kearley* v. *Thomson, 24 Q. B. D. 742; Barclay* v. *Pearson, [1893] 2 Ch. 154*, and *Petherperumal Chetty* v. *Muniandy Servai, I. L. R. 35 Calc. 551*, referred to. *Ledu Coachman* v. *Hiralal Bose, I. L. R. 43 Calc. 115*, dissented from. The rule applies whether the transfer of the property under the agreement was merely ostensible or real. *In re Great Berlin Steamboat Company, 26 Ch. D. 616*, followed. SRINIVASA *v.* SESHA (1917).

I. L. R. 41 Mad. 197

———— **s. 24**—*Contract void—Consideration unlawful—Agreement to stifle criminal prosecution—Agreement against public policy.* The plaintiff sued for specific performance of a contract whereby the defendant's husband had agreed to convey certain land to her (plaintiff) for Rs. 150 subject to the condition that in the event of a criminal prosecution for criminal breach of trust instituted by the plaintiff against the said intending vendor not being withdrawn, the contract was not to be enforced. The defendants contended that the contract was void as being opposed to public policy. *Held*, dismissing the suit, that the contract could not be enforced as part of the consideration was void on the ground of being opposed to public policy. BANI RAMCHANDRA *v.* JAYAWANTI GOVIND (1918) . **I. L. R. 42 Bom. 339**

———— **s. 30**—

See WAGERING CONTRACTS.

I. L. R. 42 Bom. 373

———— *Bombay Act III of 1865, s. 1—Lottery—Sanction of Government of India—Effect of sanction to save criminal prosecution—Sanction cannot override Imperial Acts or Acts of Indian Legislature defining civil law—Contract to purchase a ticket in a lottery though sanctioned by Government is void—Injunction cannot be granted in support of a void contract—Motion—Costs.* In April 1917, the Western India Turf Club organised a War Loan Lottery having previously obtained the sanction of the Government of India for such undertaking as a special case. The tickets in the said lottery from No. 1 onwards were offered to the public at Rs. 10 each. The plaintiff being desirous of securing a particular ticket bearing the number 15315 purchased the same through one of the agents of the Club, who had the disposal of such ticket. A receipt for Rs. 10 was passed to the plaintiff in which the number of the ticket was entered. As the book containing the ticket had not been sold to that number the agent of the Club agreed actually to hand over the ticket itself when he got to the particular number in the book. Through some mistake the book containing the particular ticket was sent to Calcutta where it was issued and delivered to defendant No. 3. The plaintiff insisting on having the ticket purchased by him applied to the Club for its delivery to him. The Club thereupon, decided to withdraw the ticket 15315 altogether. to return the plaintiff's money paid in respect of that ticket and to issue a new ticket 15315-A to the 3rd defendant. The 3rd defendant altered the number of the ticket to 15315-A but the plaintiff declined to abide by this arrangement. The plaintiff then sued the Club and 3rd defendant for an injunction and order restraining the 1st defendant, the Secretary of the Club, and 2nd defendant, a member of the Club, on behalf of himself and all other members of the Club from withdrawing ticket No. 15315 from the lottery and from paying the amount of any prize drawn by that ticket or any other ticket substituted in place thereof to the 3rd defendant. *Held*, (i) that the effect of the sanction of the Government of India being merely to save any prosecution under the criminal law, so far as the civil law was concerned, the Government had no power to overrule the Imperial Acts or the Acts of the Indian Legislature which determined the rights of parties; (ii) that having regard to the first portion of s. 30 of the Indian Contract Act which provided "that agreements by way of wager are void" the contract in question was an agreement by way of wager and was consequently void; (iii) that the contract sued on was also one of the character mentioned in the first portion of s. 1 of Bombay Act III of 1865 and was, therefore, null and void; (iv) that no injunction could be granted in support of a void contract. DORABJI JAMSETJI TATA *v.* EDWARD F. LANCE (1917).

I. L. R. 42 Bom. 676

CONTRACT ACT (IX OF 1872)—*contd.*

———— **s. 30**—*concld.*

———— **s. 56**—

See C. I. F. CONTRACTS.

I. L. R. 42 Bom. 473

See SALE OF GOODS.

I. L. R. 45 Calc. 28

———— **s. 65**—*Minor—Minority successfully pleaded as a defence to a suit—Disallowance of costs—Appeal—Competence of Appellate Court to interfere with the discretion of the Court below as to the allotment of costs.* Where the Judge has given his reasons and all the circumstances are before the Court of Appeal, the Court of Appeal can, if satisfied that the Judge's discretion has not been judicially exercised, interfere with it and make the order which the Court below ought to have made. It is no ground for giving costs against a successful defendant that the defendant pleaded that he was a minor at the time when the transaction upon which the suit was based was entered into, there being nothing to suggest that the plaintiff had been misled as to the real age of the defendant by

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 65—*concld.*

any action or statement on the part of the latter. RADHE SHIAM *v.* BEHARI LAL (1918).
I. L. R. 40 All. 558

——— ss. 65, 73—

See CONTRACT . **I. L. R. 42 Bom. 499**

——— s. 69—*Payment by a person interested which another is bound by law to pay—Gift of land by donor who undertakes to pay judi on the land—Another donee taking gift of the rest of the donor's property with full notice of the obligation, but the gift deed containing no stipulation to that effect—Obligation of the second donee to pay the judi.* K, who owned considerable property, gave a portion of it to his daughter's husband (plaintiff) in 1878, the deed of gift expressly providing that K undertook to pay the *judi* in respect of the portion. In 1902, K made a gift of the residue of his property to B, the gift-deed containing special reference to the previous gift of 1878 and enjoining the donee to act according to that gift. The *judi* was regularly paid by K first and B afterwards. In 1905, B in his turn made a gift of the property to the defendant, the deed of gift in this case contained a reference to the gift of 1878, but it contained no words requiring the donee defendant to abide by the terms of that gift. The defendant having failed to pay the *judi* to Government, the plaintiff was required to pay it. He sued to recover the amount from the defendant. *Held*, that the plaintiff was entitled to recover the amount from the defenadnt under s. 69 of the Indian Contract Act (IX of 1872), because the defendant was bound in law to pay the money in the payment of which the plaintiff was interested and which the plaintiff had paid. SOMASHASTRI *v.* SWAMIRAO KASHINATH (1917) . . . . **I. L. R. 42 Bom. 93**

——— ss. 69, 70—

See CONTRIBUTION, SUIT FOR.
I. L. R. 45 Calc. 691

——— s. 70—

1. ——— *The Civil Procedure Code (Act V of 1908), O. I, r. 8, O. XXI, r. 89 and s. 35—Suit by a member of a caste on behalf of himself and all other members—Suit dismissed with costs, the plaintiff being ordered to pay costs—Caste property attached in execution of decree—Attachment resisted by the caste—Caste property sold under order of Court—sale set aside on payment of all money under various attachments by two members of caste—Members paying money entitled to compensation out of caste property—Construction of decree in a representative suit—Observations in giving leave and drawing up order for costs in representative actions.* One S, a member of the Dakshani Fulmali caste, on behalf of himself and all other members of the caste sued two other members, the headmen of the caste for an account of the caste moneys received by them and for further relief. Prior to its institution the suit had been authorised by a resolution of the caste at a general meeting. The suit was dismissed and the Court ordered that the plaintiff should pay the defendants their costs of the suit. S appealed, and the Appellate Court dismissed the appeal with costs. In execution proceedings for the recovery of a portion of the costs the only immoveable property of the caste consisting of a *sabhagraha* or Caste Meeting House was attached and after an unsuccessful attempt on behalf of the caste to have the attachment raised,

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 70—*contd.*

the right, title and interest of S and all members of the caste in the property were sold. Subsequently two members of the caste B and H to save the property for the caste got the sale set aside under O. XXI, r. 89, by paying to the purchaser the compensation required under the Rule and to the judgment-creditors the moneys due under their attachment. B and H further paid off the moneys due under all other attachments, the total amount expended by them on behalf of the caste being Rs. 7,234. B and H claiming to be reimbursed for the amount paid by them sued the members of the caste praying that the defendants in their individual capacity and as representatives of the caste might be ordered to contribute towards the payment of the total amount paid by the plaintiffs and that in the alternative it may be declared that the plaintiffs had a charge on the *sabhagraha* for the said amount. The defendants contended that no personal decree could be passed against all the members of the caste, that the judicial sale and the warrants for attachment in the prior suit were made *per incurium* without jurisdiction and were not binding on the caste, and that by the form of the decree in the prior suit S alone was liable for all costs incurred. *Held* (i) that under s. 70 of the Indian Contract Act the plaintiffs were entitled to compensation in respect of the moneys paid by them including the five per cent. amount paid to the purchaser under O. XXI, r. 89; (ii) that on the plaintiffs undertaking not to levy execution except against the immoveable property or the shares of the members of the Fulmali caste therein, the defendants and all other members of the Fulmali caste should pay to the plaintiffs the sum of Rs. 7,234: (iii) that costs as between party and party of all parties be taxed and paid out of the immoveable property, the plaintiffs' costs having priority over those of the contesting defendants. *Suchand Ghosal* v. *Balaram Mardana, I. L. R. 38 Calc. 1, 7; Taff Vale Railway* v. *Amalgamated Society of Railway servants, [1901] A. C. 426*, and *Markt & Co. Limited*, v. *Knight Steamship Company, Limited, [1910] 2 K. B. 1021*, referred to. In giving leave under O. I, r 8, in a representative action, the Court should exercise caution before it makes persons liable for large sums who are not actually parties to a suit, nor have personally authorised it. On the other hand the representative should not be an impecunious person as otherwise a caste or similar body might carry on litigation with little fear of adverse consequences supposing the liability for costs fell only on their impecunious representative and not on themselves. Similarly in drawing up order for costs in a representative action it should be stated whether the representative party alone or the representative and all other members of the body he represents are to bear the costs, assuming there is jurisdiction in the particular case to make such an order. BHICOOBAI *v.* HARIBA RAGHUJI (1917) . . **I. L. R. 42 Bom. 556**

2. ——— *Sale—Specified sum left with vendees for payment to mortgagees of property other than the subject of the sale—Interest paid by purchasers in addition to specified sum—Gratuitous payment.* On the sale of certain immoveable property of large value it was agreed between the parties that a specified portion of the purchase money should, instead of being paid to

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 70**—*concld.*

the vendors directly, be paid on their behalf to a certain mortgagee who held a mortgage over property of the vendors other than the subject of the sale. Owing to a delay in the registration of the sale-deed, which was caused by the action of the vendors, the purchasers did not immediately pay the stipulated sum to the mortgagee, and when they did come to tender it, the mortgagee refused to accept it upon the ground that by that time a further sum had fallen due as interest. The purchasers there upon paid the further amount claimed. Subsequently the vendors sued the purchasers for the balance of the purchase money remaining unpaid, and the purchasers claimed to set off against the unpaid purchase money the sum which they had paid as interest, as above described. *Held*, that the purchasers were not entitled to the set-off claimed, as the payment of interest was in excess of the sum stipulated to be paid to the mortgagee and was in the circumstances a purely gratuitous payment. SURAJ BHAN *v.* HASHMI BEGAM (1918) . . . . **I. L. R. 40 All. 555**

——— **s. 72**—

See SALE OF GOODS.

I. L. R. 42 Bom. 16

——— **s. 73, Ill.** (a)—*Breach of contract to sell goods—Measures of damages—No actual loss by breach—No market for the goods at place of delivery—Liability for damages—Rule of Indian and English Law, comparison of.* The defendants agreed to sell a certain quantity of molasses to the plaintiffs by monthly instalments, and failed to deliver one of the instalments assigning as a reason the difficulty of obtaining freight. The plaintiffs did not purchase other molasses against the contract and there was no market for the goods at the place of delivery. The plaintiffs, who were not found to have incurred any actual loss from the non-delivery, sued to recover damages from the defendants for breach of the contract. *Held*, that the plaintiffs were entitled to damages as the case fell within illustration (*a*) of s. 73 of the Indian Contract Act which lays down that the measure of damage in a case like this is the sum by which the contract price falls short of the price for which the purchaser *might have* obtained goods of like quality at the time when they ought to have been delivered. English and Indian cases discussed. HAJEE ISMAIL AND SONS *v.* WILSON & Co. (1918).

I. L. R. 41 Mad. 709

——— **s. 74**—*Stipulation to take less than specified rate of interest, if payment punctually made, whether penalty—Manager of mortgaged property nominated by mortgagee and not dismissible by mortgagor at will, if agent of mortgagee—Title paramount, if to be enquired into in mortgage suit.* The mortgage deed provided that interest at 9½ per cent. was to be paid by equal half-yearly payments, but that if the interest at the rate of 7½ per cent. was paid before the half-yearly day appointed for payments of interest, the mortgagees shall accept the same in lieu of and in satisfaction for interest at 9½ per cent. *Held*, that if the stipulation was to pay interest at 7½ per cent., and on default of payment on a certain date interest was to be paid at 9½ per cent., there was no doubt that it could be treated as a penalty, though in the converse case it would not be a penalty according to English law. Indian cases appear to have followed the English law.

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 74**—*concld.*

But in the present case the schedule for liquidation of mortgage debt showed that the intention of the parties was that interest should be paid at 7½ per cent. and on default at 9½ per cent. S. 74 of the Indian Contract Act does away with the distinction between penalty and liquidated damages and, under the section as amended by Act VI of 1899 the Court has the power to grant relief if the contract contains any stipulation by way of penalty. The amendment does not appear to have made any real change in the law, the only difference being that if the stipulation is penal, relief can now be granted under the provisions of the section and it is not necessary for Courts to resort to their equitable jurisdiction in order to grant relief. Where in an English mortgage it was agreed only between the mortgagor and the mortgagees that certain nominees of the mortgagees should be appointed managers and be liable to furnish accounts to the mortgagees to satisfy themselves that their security was not endangered by mismanagement, and a separate deed of management was contemporaneously executed by the mortgagor in favour of the nominees to which the mortgagees were not parties and by which such nominees were appointed managers. *Held*, that the managers were agents of the mortgagor. In a suit upon the mortgage, no question of title paramount should be gone into. SHYAMPEARY DASYA *v.* EASTERN MORTGAGE AND AGENCY Co., LD. (1917) . . . . **22 C. W. N. 226**

——— **s. 108**—The expression "good" in s. 108 of the Contract Act includes all moveable property. Possession, what is. *See* under Shares. HAZARIMULL SHOHANLAL *v.* SATIS CHANDRA GHOSH (1918) . . . . **22 C. W. N. 1036**

——— **ss. 126, 128**—*Contract of guarantee—Time-barred debt guaranteed—Liability on principal contract not enforceable at law—Contract of guarantee not valid.* In 1883, a sum of money was deposited by the trustees of a certain temple with the father of one M. In 1899, there was a demand for the return of the money and a refusal thereof by M's father. In 1897, on another demand being made, one B by an oral contract of guarantee undertook to repay the temple trustees in case N failed to pay. In 1900, the temple trustees brought a suit against M and B to recover the deposit. The Subordinate Judge decreed the claim against both. Against this decree M alone appealed and in appeal it was held that the deposit with M's father was proved but that the suit was time-barred in 1895. The suit was, therefore, dismissed as against the appellant M but the trial Court's decree as against B was confirmed. In 1912, the plaintiffs, temple trustees, executed their decree against B. In 1915, B having died his sons brought a suit to recover from M the sum which had been paid by them in execution. Both the lower Courts decreed the claim. On appeal to the High Court. *Held*, that it being ascertained that the debt due to the trustees of the temple was barred by time in 1895 and the contract of guarantee was not made until 1897, there was not in law any valid contract of guarantee. The foundation of the contract of guarantee was wanting inasmuch as there was not any enforceable liability in the third person. *Hajarimal* v. *Krishnarav*, I. L. R. 5 Bom. 647, distinguished. *Per* BATCHELOR, *Ag. C. J.* By the word 'liability' used in ss. 126 and 127

CONTRACT ACT (IX OF 1872)—*contd.*

——— **ss. 126, 128**—*concld.*

of the Indian Contract Act, 1872, is intended a liability which is enforceable at law, and if that liability does not exist, there cannot be a contract of guarantee. MANJU MAHADEV *v.* SHIVAPPA MANJU (1918) . **I. L. R. 42 Bom. 444**

——— **ss. 172, 173, 176**—*Pawn, nature of security—Conditions necessary to fulfil contract of pawn—Right of pawnee to sue independently of the pawn—Government securities, pledge of—Mere delivery without endorsement, effect of.* The guardian of the plaintiffs who were minors, with the leave of the District Judge, lent a sum of money to the major brother, the defendant, on his undertaking to pledge his share in Government securities which stood in the names of himself and the plaintiffs and also his share in the *ejmali* ornaments as security for the advance. The securities were in the hands of the guardian and the ornaments were in a room to which locks had been separately put by the guardian and the defendant. On receipt of the loan the defendant except executing a pro note did nothing further. *Held*, that a pawn is not an equitable mortgage but a security intermediate between a simple loan and a mortgage which wholly passes property in the thing conveyed. It is essential to the contract of pawn that the property should be actually or constructively delivered to the pawnee, neither of which was done in this case. That the plaintiffs were entitled to have their remedy on the pro note independently of the alleged pledge under s. 176 of the Contract Act which gives a clear right to the pawnee to institute a suit independently of the pawn. That s. 172 of the Contract Act which defines a pledge deals with "goods," and certain classes of documents are specifically referred to in s. 173 which do not include Government securities. That Government securities are by statute not negotiable or transferable without endorsement on the back by the transferor and mere delivery of Government securities without endorsement gives no property in them for purposes of negotiation or sale. JYOTI PRAKASH NANDI *v.* MUKTI PRAKASH NANDI (1916).
22 C. W. N. 297

——— **s. 176**—*Pledge—Sale by pawnee of property pledged—Notice of sale.* The words—"He may sell the things pledged on giving the pawnor reasonable notice of the sale"—as used in s. 176 of the Indian Contract Act, 1872, mean that the pawnee must give reasonable notice of his intention to sell: it does not necessarily mean that a sale should be arranged beforehand and that due notice of all details should be given to the pawnor. KUNJ BEHARI LAL *v.* THE BHARGAVA COMMERCIAL BANK, JUBBULPUR (1918) . **I. L. R. 40 All. 522**

——— **ss. 178, 179**—*Goods consigned by up-country merchant to muccadum and agent for sale in Bombay—Pledge of goods by the Agent—Principal knowing of the pledge and receiving money raised by pledge from agent—Pledgee entitled to entire moneys due on pledge—Pledgee's claim not limited to the interest of the pawner in the goods pledged—Custom of up-country cotton merchants.* The plaintiffs, up-country cotton merchants, consigned cotton until the 29th of September 1913 to their usual consignees and agents for sale in Bombay, D. H. and Co. In the course of their dealings the plaintiffs frequently called upon D. H. and Co. to remit money to them in large sums on the security of the cotton in their hands and D. H. and Co. used to raise

CONTRACT ACT (IX OF 1872)—*contd.*

——— **ss. 178, 179**—*contd.*

money by pledge of the plaintiffs' cotton to the 3rd defendants' firm. The plaintiffs' representatives in Bombay knew of this course of dealing. On the 30th September 1913, D. H. and Co. were adjudicated insolvents. The accounts at that date showed that the 3rd defendants had advanced Rs. 83,000 to D. H. and Co. against which they held 757 bales of the plaintiffs' cotton and that D. H. and Co. had remitted to the plaintiffs. Rs. 50,000. The plaintiffs sued to recover thus cotton from the 3rd defendants unencumbered by the loans raised on the security thereof. alleging that D. H. and Co. were merely their warehousemen and *muccadums* and as such had no right to create any charges on their cotton. At the trial the plaintiffs contended that in any event D. H. and Co. had no authority to charge the plaintiffs' cotton beyond Rs. 50,000 which was the sum remitted by them to the plaintiffs. *Held*, that the plaintiffs having urged D. H. and Co. to pledge their cotton when necessary and having known through their representatives of the manner in which their cotton was being dealt with, the 3rd defendants were entitled to claim the entire moneys advanced by them on the pledge of the plaintiffs' cotton. S. 179 of the Indian Contract Act does not limit the scope of s. 178 but saves a pledge to the extent of the pledgor's own interest notwithstanding the presence of invalidating conditions falling under one of the provisions to s. 178. In other words when ever he has an interest the person in possession of the goods or documents has unconditional authority to charge at least that interest. LAKHAMSEY LADHA & CO. *v.* LAKHMICHAND PADAMSEY (1916).
I. L. R. 42 Bom. 205

——— **s. 222**—

See CONTRACT TO PURCHASE AND SHIP GOODS . **. I. L. R. 41 Mad. 1060**

——— **ss. 239, 247, 248**—*Hindu Law—Joint Hindu family—Family business, started during minority of undivided son—Business continued after son became major—Debts incurred in business—Son, whether partner and personally liable and for what debts.—Adjudication as insolvent—Son, whether liable to adjudication—Partner, whether son becomes by helping during minority or taking part in business after majority—Admission of minor to benefits of partnership, meaning of.* A Hindu father, of the Nattukottai Chetti caste, started a business during the minority of his undivided son; it was continued after the son became a major; no public notice of repudiation of partnership (if the son were a partner) was given by the son on his becoming a major; it was found that the son was helping in the business during his minority and was taking an active part in the business after attaining majority. In respect of the debts incurred in the business, both the father and the son were adjudicated insolvents; the son applied to set aside the order of adjudication passed against him, contending that he was not liable to adjudication. *Held* (by the Court), that the business should be held to be joint family business of the father and the son; *Held* (by WALLIS, *C. J.* and SPENCER, *J.*, SADASIVA AYYAR, *J.*, dissenting), that the members of a joint Hindu family on attaining majority do not necessarily by virtue of ss. 247 and 248 of the Contract Act or otherwise become personally liable for, and liable to adjudi-

CONTRACT ACT (IX OF 1872)—*concld.*

———— **ss. 239, 247, 248**—*concld.*

cation in respect of, debts contracted in the joint family business during their minority. Meaning of "admitted to the benefits of the partnership" in s. 247 considered. The fact that the minor helped in the joint family business is not enough to show admission: within the meaning of the section. *Samalbhai Nathubhai* v. *Someshwar, I. L. R. 5 Bom. 38, In the matter of Hiroon Muhammad, I. L. R. 14 Bom. 189,* and other cases considered. *Lutchmanan Chetty* v. *Sivaprokasa Modeliyar, I. L. R. 26 Calc. 349,* followed. *Per* SADASIVA AYYAR, *J.* Both by the rules of Hindu Law and by s.48 of the Contract Act (which also applies to this case), the son was personally liable for all the debts in respect of non-payment of which he was adjudicated an insolvent. Partnership in a family business does not depend upon the consent of the partners in many cases but upon the family being a trading family and the business being conducted for the benefit of the family, persons born into the family from time to time becoming partners as a matter of course. THE OFFICIAL ASSIGNEE OF MADRAS *v.* PALANIAPPA CHETTY (1918).

I. L. R. 41 Mad. 82

———— **ss. 252, 254, sub-s. (6)**—

See PARTNERSHIP.

I. L. R. 42 Bom. 380

CONTRACT FOR SALE.

———— *Construction—Computation of time—"Up to" Wednesday—"Unit"—Evidence Act (I of 1872), s. 91—Oral evidence.* On 12th May 1917, the defendant offered to sell his motor-car to the plaintiff company in these words. "Nevertheless, I am willing to hand over the Mar-car to you against a cheque for Rs. 3,120 . . . As I intend advertising the car unless you wish to have it, please understand that my offer only holds good *up to Wednesday* next, as the time I have is limited." The plaintiff company sometime on Wednesday, the 16th May, tendered Rs. 3,120 to the defendant and asked for delivery of the car, in accordance with the offer of the 12th May. The defendant, however, refused the tender contending that his offer expired on Tuesday, the 15th May. *Held,* that upon the true construction of the letter of the 12th May and the words "up to Wednesday," the offer remained open until midnight on Wednesday, and did not expire at midnight on Tuesday. *The King* v. *Stevens, 5 East 244, Bellhouse* v. *Mellor, 4 H. & N. 116, Isaacs* v. *Royal Insurance Co., L. R. 5 Ex. 296,* and *Rogers* v. *Davis, 8 Ir. L. R. 399,* considered. METROPOLITAN ENGINEERING WORKS *v.* DEBRUNNER (1917).

I. L. R. 45 Calc. 481

CONTRACTS, C. I. F.

See C. I. F. CONTRACTS.

I. L. R. 42 Bom. 473

CONTRIBUTION.

See COMPANY . **I. L. R. 40 All. 45**

See COSTS . **I. L. R. 40 All. 672**

CONTRIBUTION, SUIT FOR.

———— *Contract Act (IX of 1872), ss. 69, 70.* X, a mortgagee, obtained a decree against A, B and C as representatives in interest of his mortgagor. A satisfied the decree-holder in full, and instituted a suit for contribution against B and C for recovery of two-thirds of the money. B and C denied that A had any interest in the mortgaged property, and urged that his payment was voluntary. The Court of first instance found, on the evidence, that A had an interest in the property, but the lower Appellate Court dismissed the suit holding that A had none. *Held,* that a payment in satisfaction of a decree, by a person who is a party to the decree and was bound thereby, was a payment made lawfully within the meaning of s. 70 of the Indian Contract Act. *Bindubashini Dasi* v. *Harendralal Roy, I. L. R. 25 Calc. 305, Radha Madhub Samonta* v. *Sasti Ram Sen, I. L. R. 26 Calc. 826,* discussed. *Desai Himat Singji* v. *Bhavabhai Khayabhai, I. L. R. 4 Bom. 643, Jinnat Ali* v. *Fateh Ali Matbar, 13 C. L. J. 646; 15 C. W. N. 332,* distinguished. SERAFAT ALI *v.* ISSAN ALI (1917).

I. L. R. 45 Calc. 691

CONTRIBUTORY.

See COMPANIES ACT (VI OF 1882), ss. 45, 58 . . **I. L. R. 42 Bom. 595**

See COMPANY . **I. L. R. 42 Bom. 264**

CONTROLLER.

———— **jurisdiction of**—

See DESIGNS . **I. L. R. 45 Calc. 606**

CONVEYANCE.

See LEASE . **I. L. R. 42 Bom. 103**

COPARCENERS.

See HINDU LAW—COPARCENERS.

I. L. R. 41 Mad. 637

COSTS.

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5 AND 10.

I. L. R. 40 All. 109

See CONTRACT ACT (IX OF 1872), S. 65.

I. L. R. 40 All. 558

See CONTRACT ACT (IX OF 1872), S. 70.

I. L. R. 42 Bom. 556

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 344.

I. L. R. 42 Bom. 254

See EXAMINATION ON COMMISSION.

I. L. R. 45 Calc. 492

See SECURITY FOR COSTS.

I. L. R. 42 Bom. 5

1. ———— *Appellate Court when should interfere with order of primary Court as to costs.* Where costs are in the discretion of the judge, the Court of Appeal will assume that he has exercised his discretion unless it is satisfied that he has not exercised it. Also, the Appellate Court will not interfere with an exercise of the discretion of the lower Court unless it has proceeded on a manifestly wrong ground. SARADINDU MUKERJI *v.* CHARU CHANDRA DUTT (1917).

22 C. W. N. 372

2. ———— *General rules of the High Court (Civil), rr. 21, 25—Pleader's fee—Order on objection as to jurisdiction raised by defendant returning plaint for presentation to proper Court. Held,* that r. 21 of the General Rules (Civil), and not r. 25, applied to a case where a question as to the jurisdiction of the Court, having been raised by the defendant, was decided against the plaintiff,

COSTS—*contd.*

and the plaint returned for presentation to the proper Court. GAURI SAHAI *v.* BAHREE (1918). **I. L. R. 40 All. 515**

3. ——— *Joint decree for costs against defendants claiming under separate titles defendants being also wrong-doers—Suit for contibution—Sutit not maintainable.* Two persons each holding by a separate title a half share in certain property were arrayed as co-defendants to a suit for recovery of a share in the said property. The plaintiffs obtained a decree with costs, the order for costs being as against the defendants jointly. The plaintiffs decree-holders executed the decree for costs against one of the judgment-debtors, and he then sued the other judgment-debtor for contribution. *Held*, that the suit would not lie. *Fakire* v. *Tasadduq Husian, I. L. R. 19 All. 462*, followed. NAND LAL SINGH *v.* BENI MADHO SINGH (1918 . . . **I. L. R. 40 All. 672**

4. ——— *Successful party not to be deprived of costs unless guilty of misconduct, omission or neglect—Discretion of lower Court interfered with, when facts were misapprehended and the established priniple violated—Costs occasioned by unnecessary printing at the instance of attorneys, payable by attorneys personally.* A Hindu, Maratha, by caste, died possessed of property worth about Rs. 3,000. His widow, the plaintiff, sued the defendant claiming to be another widow of the deceased for a declaration that the latter though living with the deceased was not entitled to the rights of a Hindu wife, but was according to the custom of the community entitled to maintenance out of the estate of the deceased. The trial Judge decided against the defendant and referred the suit to the Commissioner to take an account of the estate of the deceased and for an inquiry as to the proper amount to be allowed to the defendant for maintenance. Before the Commissioner the quantum of maintenance was agreed by consent of parties, but the defendant put in a claim for ornaments which was disallowed. The Commissioner made his report and the suit then came up for further directions and costs before a Judge who was not the trial Judge. It was represented to him on behalf of the defendant that the suit was necessary and that costs should come out of the estate. The plaintiff submitted that the estate was small, that the defendant never had any case and had lost all along the line and that although the plaintiff would be justified in asking for costs against the defendant she would not do so as nothing could be got from the defendant. The learned Judge thought that the plaintiff was more in fault than the defendant and ordered the costs to come out of the estate. The plaintiff appealed. *Held*, (i) that there had been a misapprehension of facts on the part of the learned Judge who made the order of costs and a violation of the established principle by throwing upon the plaintiff the costs of the unsuccessful defendant where the plaintiff had been guilty of no misconduct. (ii) That the order as to costs out of the estate must be deleted, and the defendant be made to bear her own costs. *Cooper* v. *Whittingham, 15 Ch. D. 501, Kuppuswami Chetty* v. *Zamindar of Kalahasti, I. L. R. 27 Mad. 341*, and *Ranchordas Vithaldas* v. *Bai Kasi, I. L. R. 16 Bom. 676*, referred to. Costs occasioned by the unnecessary printing of certain matter at the instance of parties' attorneys were made payable by the attorneys personally, and not allowed

COSTS—*concld.*

to fall upon the clients. LAXMIBAI *v.* RADHABAI (1917) . . . . **I. L. R. 42 Bom. 327**

COURT FEE.

See COURT FEES ACT (VII OF 1870).

See CIVIL PROCEDURE CODE (1908) O. XXXIV, R. 6. **I. L. R. 40 All. 553**

See COURT FEES ACT (VII OF 1870) SCH. I, ART. 1 . **I. L. R. 40 All. 93**

1. ——— *Appeal—"Decree"—Civil Procedure Code (1908), Order XXXIV, r. 6—Order rejecting application for a decree over against the mortgagor.* An order on an application for a decree under O. XXXIV, r. 6, of the Code of Civil Procedure is a "decree" as that term is defined in the Code. An appeal, therefore, from such an order must bear an *ad valorem* court fee stamp, and not merely a stamp of Rs. 2. MUHAMMAD ILTIFAT HUSAIN *v.* ALIM-UN-NISSA BIBI (1918) . . . **I. L. R. 40 All. 553**

2. ——— *Suit for administration or account—Valuation for purposes of court-fees—Jurisdiction—Court-fees Act (VII of 1870), s. 7, cl. IV (f).* In an administration suit valued at Rs. 30,000 for purposes of jurisdiction, and at Rs. 100 for adjustment of account, and wherein court-fees were paid on the latter sum only, together with Rs. 10 for the approximate value of the claim for account. *Held*, that such a suit was in essence a suit for account within the meaning of s. 7, cl. IV(*f*) of the Court-fees Act, and that adequate court-fees had been paid on the plaint which could not be rejected. *Khatija* v. *Shekh Adam Husanally Vasi, I. L. R. 39 Bom. 545, Sasi Bhushan Bose* v. *Maharaja Sir Manindra Chandra Nandy, 24 C. L. J. 448, Satya Kumar Banerjee* v. *Satya Kripal Banerjee, 10 C. L. J. 503.* followed. SARAJU BALA DASI *v.* JOGEMAYA DASI (1917) **I. L. R. 45 Calc. 634**

COURT FEES ACT (VII OF 1870).

——— **s. 7—**

See MADRAS CIVIL COURTS ACT (III OF 1873), S. 14 . **I. L. R. 41 Mad. 721**

——— **s. 7, cl. IV (f)—**

See COURT-FEE. **I. L. R. 45 Calc. 634**

——— **s. 7 (vi)**—*Suit for pre-emption—Suit partly decreed and partly dismissed—Appeal raising questions both as to true price and as to right to pre-empt—Court-fee.* Five villages were transferred by means of one sale deed, the consideration set forth in the deed being Rs. 44,000. In respect of this transaction a suit for pre-emption was brought; but the plaintiff alleged that the true consideration was Rs. 2,500 only. As to two of the villages the suit was decreed, on payment of Rs. 21,000, which was found to be the proportionate part of the Rs. 44,000 assignable to these villages: as to the other three villages the suit was dismissed. The plaintiff appealed (*a*) as to the price to be paid for the two villages in respect of which the decree was in his favour and (*b*) in respect of the disallowance of his claim to pre-empt the other three villages. A question having arisen as to the proper court-fee payable on this appeal, it was *held* that the appeal was divisible into two clear and distinct parts and that in respect of (*a*) the appellant should pay an

COURT FEES ACT (VII OF 1870)—*concld.*

——— **s. 7**—*concld.*

ad valorem fee on the difference between 21-44 of Rs. 2,500 and Rs. 21,000, while in respect of (*b*) the appellant should pay a court-fee calculated according to s. 7, vi, of the Court Fees Act, 1870, on five times the Government Revenue of the three villages claimed. ABINASH CHANDRA *v.* SHEKHAR CHAND (1918) . **I. L. R. 40 All. 353**

——— **ss. 7, 11 ; Sch. II, Art. 17** (*6*)—*Suit for partition of immoveables, moveables and funds of joint family business—Suit if bad for misjoinder—Civil Procedure Code (Act V of 1908), O. II, r. 4—Proper court-fee in such suit.* In a suit for partition, the plaintiff has to include the whole of his claim, that is to say, the whole of the properties which are alleged by him to be properties of the joint family, immoveable properties, moveable properties and funds which according to him have resulted from joint business carried on by members of the family on behalf of all, and such a suit cannot be treated as one for recovery of possession of both immoveable and moveable property requiring for their joinder Court's leave under O. II, r. 4 of the Civil Procedure Code. An order passed in such a suit requiring the plaintiff to elect to proceed either with his claim for recovery of immoveable properties or with that for recovery of the moveables and funds is erroneous. *Held*, that the plaint in the suit was properly stamped as required by s. 7 and Sch. II, Art. 17, cl. (*6*) of the Court Fees Act. Should the amount due upon taking accounts prove on investigation to exceed the approximate value given in the plaint, the course to be pursued was that under s. 11 of the Court Fees Act. BENI MADHAB SARKAR *v.* GOBIND CHANDRA SARKAR (1916) . . **22 C. W. N. 669**

——— **s. 13**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 115, 151, O. XLI, R. 23).
I. L. R. 42 Bom. 363

——— **ss. 19** (viii), **191**—*Court-fee—Computation of duty payable on probate or letters of administration. Held*, on a construction of the Court Fees Act, 1870, that no duty is payable in respect of a grant of probate or letters of administration where the value of the estate, after making the deductions specified in annexure B of the third schedule, is less than Rs. 1,000. *In the goods of* MRS. E. E. W. MEIK (1916).
I. L. R. 40 All. 279

——— **Sch. I, Art. 1**—*Court-fee—Cross objection filed in appeal.* Under art. 1 of sch. I to the Court Fees Act, 1870, a party filing cross-objections must pay an *ad valorem* fee according to the value or amount of the subject matter in dispute. LAKHAN SINGH *v.* RAM KISHAN DAS (1917) . . . . **I. L. R. 40 All. 93**

——— **Sch. II, Art. 6 ; s. 7, cl. XI**—*Suit for declaration that plaintiff is an occupancy tenant—Agra Tenancy Act (II of 1901), s. 95—Court-fee.* In a suit under s. 95 of the Agra Tenancy Act, 1901, to declare the plaintiffs' status as an occupancy tenant the plaint or memorandum of appeal should bear a court-fee of eight annas as provided in art. 5 of sch. II to the Court Fees Act; s. 7, cl. xi, of the Act does not apply to such a suit RATAN SINGH *v.* KHEM KARAN (1918).
I. L. R. 40 All. 358

COURT OF RECORD.

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

COURT OF WARDS ACT (BENG. IX OF 1879).

——— **s. 55**—*Suit instituted in anticipation of sanction of Court of Wards to save limitation—Duty of manager to have proceedings stayed until sanction obtained.* Where a manager under the Court of Wards instituted a suit relating to some *chur* lands in anticipation of sanction sought and obtained from the Court of Wards: *Held*, that having regard to the difficulty of fixing the precise time when any *chur* appeared above water and formed into land, the suit was not wrongly instituted simply because it was later on found that there was still some time before the period of limitation actually expired, but the manager should, after instituting the suit, have had all proceedings therein stayed until sanction was duly obtained. That all proceedings which took place before sanction was obtained must be set aside and the suit tried *de novo*. DIGENDRO CHANDRA SEN *v.* NRITYA GOPAL BISWAS (1917) . . **22 C. W. N. 419**

COURT OF WARDS ACT (MAD. II OF 1902)

——— **ss. 41, 37**—*Non-notification of pecuniary claims as required by s. 37, effect of—Cessation of interest, whether final—Postponement of payment of unnotified claims to notified claims, whether, continued after cessation of Court of Wards' management.* The direction contained in s. 41 of the Madras Court of Wards Act (II of 1902) to postpone payment of pecuniary claims against a ward of the Court which are not notified to claims notified to the Collector as required by s. 37 of the Act applies only to the Court of Wards and not to others authorised to execute decrees under the Civil Procedure Code; and that to in respect of unsecured claims; and the direction is not operative after the ward's estate ceases to be under the Court of Wards. Hence a mortgage decree against a person which the decree-holder failed to notify to the Collector while the person was under the Court of Wards is executable in Civil Courts, without any liability to postponement to notified claims, after the Court of Wards' management ceases. But non-notification of existence of the claim as required by s. 37 entails a final cessation of interest from six months after the notification prescribed in s. 37 of the Act except in the event specified in s. 55 (*4*). *Depuru Kalappa Reddy* v. *Umada Rajah, 1 Mad. W. N. 75*, considered. RUNGA ROW *v.* RAJAH OF KARVETNAGAR (1917).
I. L. R. 41 Mad. 503

COURT SALE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47 . **I. L. R. 42 Bom. 411**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 70; O. XXI, R. 72.
I. L. R. 42 Bom. 621

COVENANT.

——— **breach of**—

See EJECTMENT . **I. L. R. 45 Calc. 469**

CRIMINAL MISAPPROPRIATION.

See PENAL CODE (ACT XLV OF 1860, SS. 403 AND 22 . **I. L. R. 40 All. 119**

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— **s. 4**—*Penal Code (Act XLV of 1860), ss. 193, 210—Sanction to prosecute—Complaint—Letter from trying Magistrate to his official superior asking merely for direction as to procedure.* The holder of a decree for rent, passed by an Assistant Collector of the second class, took out execution for a larger sum than was in fact due and also gave in his application a wrong date as the date of the decree. The judgment-debtor paid the amount claimed under compulsion, and thereafter applied for sanction to prosecute the decree-holder. Upon receipt of this application the Assistant Collector wrote a letter to the District Magistrate, forwarding it through his immediate superior the Sub-divisional Magistrate, in which he stated all the facts of the case and concluded by soliciting orders in the case. The Sub-divisional Magistrate, instead forwarding this letter to the District Magistrate, himself passed orders for the prosecution of the decree-holder. He tried the case himself and convicted the decree-holder of offences under ss. 193 and 210 of the Indian Penal Code. On appeal the conviction and sentence were upheld by the Sessions Judge. *Held*, that the letter written by the Assistant Collector to the District Magistrate, in which the former did not ask that any action should be taken by the Magistrate, but merely for directions as to how he should proceed, did not amount to a "complaint" within the meaning of s. 4 of the Criminal Procedure Code, and, there being no complaint, the trial was illegal. EMPEROR *v.* SHEO SAMPAT PANDE (1918) . . . . **I. L. R. 40 All. 641**

——— **ss. 4 (*l*) (o), 236, 237, 403 (*l*)**—

See AUTREFOIS ACQUIT.

I. L. R. 45 Calc. 727

——— **ss. 96, 98**—*Search warrant, issue of long after application.* Where in a case of criminal trespass and theft the complainant at the time of applying for process prayed for the issue of a search warrant but the Magistrate after repeated applications made an order for the issue of the warrant more than three weeks after: *Held*, that although the procedure was not contrary to the actual letter of ss. 96 and 98, Criminal Procedure Code, it was so dilatory that it could only tend to defeat the object for which such a warrant is issued. BILAS ROY CHOWDHURY *v.* RAM GOPAL KHEMKOR (1917) . . . . . **22 C. W. N. 719**

——— **s. 100**—

See SEARCH WARRANT.

I. L. R. 45 Calc. 905

——— **ss. 107, 125, 438**—*Security to keep the peace—Revision—Jurisdiction of High Court and Sessions Judge.* A Magistrate of the first class ordered certain persons to give security for keeping the peace. The persons to be bound over applied to the Sessions Judge to revise the order. The Sessions Judge was of opinion that the applicants should not have been bound over and accordingly referred the case to the High Court with a recommendation that the order should be set aside. *Held*, the order having been passed by a Magistrate subordinate to the District Magistrate, the record should, under s. 125 of the Code of Criminal Procedure, have been laid before the District Magistrate to deal with the matter. Where a Code gives a particular Court jurisdiction to act in certain matters, it is that Court which should be applied to and not the High Court. *Banarsi Das v. Partab Singh, I. L. R. 35 All. 130*, referred to. EMPEROR *v.* LALJI (1917) . **I. L. R. 40 All. 141**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **ss. 107, 125**—*concld.*

——— **ss. 107, 192, 528**—*Previous proceedings under s. 107 and prosecution under the Penal Code—Discharge—Subsequent proceedings under s. 107 on the same facts, if maintainable—Jurisdiction of Magistrates—Transfer by District Magistrate to a Magistrate without local jurisdiction before issue of notice to accused—Order of such Magistrate validity of—Notice to accused, vague—Effect of notice.* A Magistrate is not entitled to institute proceedings under s. 107 of the Criminal Procedure Code upon facts and information which have already been the subject of enquiry under that section or in connexion with charges under the Penal Code brought against persons who have been discharged in those proceedings. A District Magistrate cannot be said to have taken cognizance of a case under s. 107, in which he has not issued notice to the accused to show cause why they should not be proceeded against, and has no power under s. 192 of the Criminal Procedure Code to transfer such a case to another Magistrate. A District Magistrate has no power under s. 528 of the Criminal Procedure Code to make over the initiation of proceedings in a case under s. 107 of the Criminal Procedure Code to a Magistrate who has no local jurisdiction in the matter. A Magistrate who has no local jurisdiction to initiate proceedings in a matter under s. 107, Criminal Procedure Code, acquires none by the transfer of a case to him from a Magistrate who has jurisdiction but has not taken proceedings, and his proceedings are void and should be quashed. Proceedings under s. 107 of the Criminal Procedure Code should be quashed if the notice issued to the accused under that section is so vague as not to give the accused particulars of the offences charged. *Nirbeekar Chandra Mukerjee v. The Emperor, 13 C. W. N. 580, Surjya Kanta Roy Chowdhry v. Emperor, I. L. R. 31 Calc. 350*, and *King-Emperor v. Munna, I. L. R. 24 All. 151*, followed. KONDA REDDY *v.* KING-EMPEROR (1917) . **I. L. R. 41 Mad. 246**

——— **s. 109**—*Security for good behaviour from vagrant and suspected person.* Petitioner, a *kaviraj* by profession and a dealer in cocoons, was found at midnight in association with two others who had in their possession house-breaking implements. On being discovered he fled and when arrested remained silent and the explanation he subsequently gave to the Magistrate of his presence at the time and place in question was false. *Held*, that the facts found did not bring the petitioner within either clause of s. 109 of the Code. *Per* SHAMS-UL-HUDA, *J.* That cl. (*a*) of s. 109, Criminal Procedure Code, refers to a continuous act and does not therefore apply to a case where there is a momentary effort at concealment to avoid detection or arrest nor can it apply to the case of a person brought under arrest for it cannot be said of such a person that he is taking precautions to conceal his presence. RESHU KAVIRAJ *v.* KING-EMPEROR (1917) . . . **22 C. W. N. 163**

——— **s. 110**—*Court limiting the number of defence witnesses to that of witnesses on the other side—Indian Evidence Act (I of 1872), s. 30—Applicability of, to bad livelihood proceedings—Admissibility of confession in previous dacoity case*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 110**—*concld.*

against co-accused. In a proceeding under s. 110, Criminal Procedure Code, the trying Magistrate declined to examine on behalf of the defence more than the same number of witnesses as were examined for the prosecution and relied on the confession of one of the petitioners implicating himself and two other petitioners in a case of dacoity. *Held,* that it is not open to the trying Magistrate to put such an arbitrary limit on the witnesses whose evidence the defence desires to adduce. That the confession was inadmissible against the two co-accused, the provisions of s. 30 of the Evidence Act not being applicable to a case like the present. AMIRULLA PRAMANIK *v.* KING-EMPEROR (1917) . . . **22 C. W. N. 408**

——— **ss. 110** (*b*), **117**—*Security for good behaviour—Evidence for general repute not admissible when the case for the prosecution rests on s. 110* (*f*). In a proceeding under s. 110 of the Code of Criminal Procedure, where the basis of the Court's order is cl. (*f*) of that section, the fact that the person against whom the proceeding is taken is so desperate and dangerous as to render his being at large without security hazardous to the community is not a fact which under s. 47 of the Code can be proved by evidence of general repute. EMPEROR *v.* INDAR (1918) . . **I. L. R. 40 All. 372**

——— **ss. 110, 123**—*Security for good behaviour—Security furnished—Record not required to be sent to the Sessions Judge for orders.* Under s 123, cl. (*2*) of the Code of Criminal Procedure it is only necessary to lay the proceedings before the Sessions Judge or the High Court when security has not been given, not when it has been given *Rai Isri Pershad* v. *Queen-Empress, I. L. R. 23 Calc. 621,* referred to. EMPEROR *v.* RAM KISHAN (1917) . . . **I. L. R. 40 All. 39**

——— **s. 117** (*3*)—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 36 . **I. L. R. 40 All. 153**

——— **s. 144**—

See PENAL CODE (ACT XL V OF 1860) SS. 332, 323 . **I. L. R. 40 All. 28**

——— **s. 145**—

1. ——— *Magistrate's refusal to take documentary evidence when mineral rights claimed on leases and settlements, if material irregularitly in procedure—Error of law and judgment—Interference of High Court.* Where the dispute was regarding the mineral rights in a certan area between the lessees under the *putnidars* and the *dar-putnidars* and the Magistrate declined to accept or consider documentary evidence on either side: *Held, per* CHITTY AND RICHARDSON, *JJ.* (TEUNON. *J., contra*), that whether or not it is possible to decide the question of actual possession on the materials before him, it is for the Magistrate to decide, and where he has found it possible to decide that question there is no material irregularity in procedure in rejecting evidence as to title and the High Court will not interfere if the Magistrate committed an error of law or of judgment. SUJAHDI MONDOL *v.* F. L. CORK (1917).
22 C. W. N. 499

2. ——— *Supplementary order at the instance of one party without notice to the other.* Proceedings under s. 145, Criminal Procedure Code, were drawn up in respect of certain premises consisting of a *dalan,* a hotel and a privy and the Magistrate made his final order with regard to the first two. Subsequently the omission in respect of the privy being brought to his notice by one of the parties the Magistrate declared that party's possession of it without any notice to the other party. *Held,* that the order should not have been made without hearing the other party. NATABAR DUTT *v.* BIRESWAR RAKHIT (1917).
22 C. W. N. 552

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 145**—*concld.*

3. ——— *Government of India Act, 1915, s. 107—Order under s. 145 of the Code of Criminal Procedure made by a Magestrate duly empowered to act under chapter XII of the Code—Revision—Jurisdiction.* When proceedings are in intention, in form and in fact proceedings under chap. XII of the Code of Criminal Procedure, and are taken by a magistrate duly empowered to act under that chapter, the High Court has no power to send for the record of those proceedings, either under the Code of Criminal Procedure or under the Government of India Act, 1915. *Matukdhari Singh* v. *Jaisri, I. L. R. 39 All. 612,* followed. It is, however, open to a party in such a case to satisfy the High Court that property of which he is entitled to possession has been dealt with by an order which has no legal authorty at all, and he may do so by an affidavit or in any other reliable manner, and thereby invoke the superintending power of the Court. SUNDAR NATH *v.* BARANA NATH (1918) . . . **I. L. R. 40 All. 364**

4. ——— *Symbolical possession, value of, and how far a determining factor—Magistrate's duty to decide actual possession where considerable time has elapsed since delivery of symbolical possession.* The second party's case was that they purchased the disputed property at a sale in execution of a money-decree against one N and his sons while the first party alleged that the property belonged to the whole body of villagers whose possession continued, even after the delivery of symbolical possession which took place in June 1915, up to November 1916, when the proceedings were started. *Held,* that the value of the delivery of symbolical possesion was little as against parties who set up an independent title and even as against N and his descendants its value as a piece of evidence must vary inversely with the time that has elapsed since the date of the decree and the delivery of possession thereunder and it was incumbent on the Magistrate to consider the uestion of actual possession at the date of the proceedings on the evidence adduce on that point before he could make a final order. HAZARI KHAN *v.* NAFAR CHANDRA PAL CHAUDHURY (1917).
22 C. W. N. 479

——— **ss. 164, 298**—

See MISDIRECTION.
I. L. R. 45 Calc. 557

——— **s. 170**—Whether the discretion vested in the investigating police officer by s. 170 can be controlled by the Superintendent of Police. UMESH CHANDRA ROY *v.* SATISH CHANDRA ROY (1917).
22 C W. N. 69

——— **ss. 182, 531**—

See COMPANY . **I. L. R. 45 Calc. 490**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 585

1. ——— *Sanction to prosecute—Abetment of perjury before a Committing Magistrate—Application for sanction made to the Committing Magistrate—Transfer of the Magistrate pending inquiry—The Magistrate succeeded by another Magistrate who had no power to commit—Sanction proceedings sent to District Magistrate—Grant of sanction by District Magistrate.* It was alleged that the applicant, who was a pleader, had during the course of an inquiry before a Committing Magistrate, abetted perjury. An application for sanction to prosecute the applicant was, therefore, made to the Magistrate. While the proceedings for sanction were pending before him, the Magistrate was transferred and was succeeded by another Magistrate who had only second class powers and had no power to commit. The outgoing Magistrate accordingly submitted the sanction proceedings to the District Magistrate, who conducted the inquiry and granted the sanction. The applicant applied to the High Court contending that the District Magistrate had no jurisdiction to grant the sanction. *Held*, that the District Magistrate had jurisdiction to grant the sanction, inasmuch as he was clearly one of the officers on whom devolved the disposal of committal cases. *In re* RAMRAO N. BELLARY (1917).

I. L. R. 42 Bom. 190

2. ——— *Sanction to prosecute—Appeal against order refusing sanction—Munsif of Jaunpur—Additional Sessions and Subordinate Judge of Jaunpur—Bengal Agra and Assam Civil Courts Act (XII of 1887), s. 21(4).* *Held*, that an application to revoke or grant a sanction for a prosecution granted or refused by the Munsif of Jaunpur would lie to the Additional Sessions and Subordinate Judge, Jaunpur. *Held*, also, that a Court to which such an application is made is competent to take additional evidence for the purpose of satisfying itself whether sanction ought or ought not to be granted. *Rahmat-ullah v. The Emperor, 32 Indian Cases 157*, followed. EMPEROR *v.* JAGRUP SHUKUL (1917).

I. L. R. 40 All. 21

3. ——— *Sanction to prosecute—Period for which sanction remains in force—Terminus a quo.* Under cl. (*6*) of s. 195 of the Code of Criminal Procedure, the date on which sanction is given is the date of the order of the Court which originally granted sanction and not the date of any subsequent order refusing to set it aside. *In re Muthukudam Pillai, I. L. R. 6 Mad. 190*, followed. TILAK RAM *v.* DALIP SINGH (1918).

I. L. R. 40 All. 338

4. ——— *Sanction proceedings—Grant of sanction by first Court—Confirmation of sanction by Appellate Court—Revisional application against grant of sanction rejected summarily by High Court—Time cannot run from the date of summary rejection.* On the 24th July 1916, a sanction to prosecute was given by the first Court; it was confirmed on appeal by the District Court on the 23rd October 1916. An application to the High Court under its revisional jurisdiction against the grant of sanction was summarily rejected on the 1st February 1917. A complaint under the sanction was filed on the 10th July 1917. Upon an objection being raised that the complaint was time-barred under s. 195, cl. (*6*), of the Criminal Procedure Code, 1898, as more than six months had elapsed since the grant of sanction. *Held*, upholding the objection, that the complaint was time-barred for the summary rejection of the application by the High Court did not constitute a date from which the period of six months began to run. PARVATRAO MHASKOJIRAO, *In re* (1917).

I. L. R. 42 Bom. 281

5. ——— *Prosecution of Receiver appointed by Court without sanction—Agent of firm appointed Receiver and acting for it, position of.* The accused was a partner and sole representative in Calcutta of a firm to which some moneys were due from a firm of which the complainant was a partner. The firm of the accused brought a suit in the High Court and by virtue of an order for attachment before judgment, took delivery of some bales of jute belonging to the firm of the complainant in respect of which the firm of the accused was appointed Receiver. Subsequently an order was made by the High Court with the consent of the parties that on the complainant's firm furnishing security the firm of the accused would give delivery of the jute to the complainant's firm which however on taking delivery of some bales alleged that the jute had been tampered with. A charge was then laid under s. 406, Indian Penal Code, against the accused. *Held*, that although, strictly speaking, the firm of the accused was appointed Receiver, the accused as representing the firm must be deemed to be the Receiver appointed by the High Court and the prosecution did not lie without the sanction of the Court. SANTOKE CHAND *v.* SUGAN CHAND MUNAWAT (1918) . . **22 C. W. N. 910**

——— s. 195, cls. (*1*) (*b*), (*7*)—*Sanction for perjury—Appellate Court to which appeals do not ordinarily lie, hearing appeal by transfer—Jurisdiction of, to grant sanction for perjury, whether as original or as Appellate Court.* The offence of perjury is complete when the false statement is made in the Court of first instance and it is not re-committed in the Appellate Court by the production of the record or otherwise in appeal, so as to entitle the Appellate Court to grant sanction as an Original Court. And a Joint Magistrate to whose Court appeals from convictions by a Third-class Magistrate do not ordinarily lie but who hears an appeal from such Court by transfer from the District Magistrate cannot grant sanction for perjury committed before the Third-class Magistrate either as a Court of first instance or as an Appellate Court. *Ercma Variar* v. *Emperor, I. L. R. 26 Mad. 656*, referred to. *Bhadesar Tiwari* v. *Kamta Prasad, I. L. R. 35 All. 90*, not followed. ANANTHARAMAYA *v.* TUKKADU (1918).

I. L. R. 41 Mad. 787

——— s. 195 (*6*), (*7*) (*b*) (*c*)—

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 336

——— s. 196A—

See PENAL CODE (ACT XLV OF 1860), S. 120B . . **I. L. R. 40 All. 41**

——— ss. 197, 210, 215—*Committal proceeding—Evidence taken in absence of sanction to prose-*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—*concld.*

cution being raised that the complaint was time-barred under s. 195, cl. (*6*), of the Criminal Procedure Code, 1898, as more than six months had elapsed since the grant of sanction. *Held*, upholding the objection, that the complaint was time-barred for the summary rejection of the application by the High Court did not constitute a date from which the period of six months began to run. PARVATRAO MHASKOJIRAO, *In re* (1917).

I. L. R. 42 Bom. 281

5. ——— *Prosecution of Receiver appointed by Court without sanction—Agent of firm appointed Receiver and acting for it, position of.* The accused was a partner and sole representative in Calcutta of a firm to which some moneys were due from a firm of which the complainant was a partner. The firm of the accused brought a suit in the High Court and by virtue of an order for attachment before judgment, took delivery of some bales of jute belonging to the firm of the complainant in respect of which the firm of the accused was appointed Receiver. Subsequently an order was made by the High Court with the consent of the parties that on the complainant's firm furnishing security the firm of the accused would give delivery of the jute to the complainant's firm which however on taking delivery of some bales alleged that the jute had been tampered with. A charge was then laid under s. 406, Indian Penal Code, against the accused. *Held*, that although, strictly speaking, the firm of the accused was appointed Receiver, the accused as representing the firm must be deemed to be the Receiver appointed by the High Court and the prosecution did not lie without the sanction of the Court. SANTOKE CHAND *v.* SUGAN CHAND MUNAWAT (1918) . . **22 C. W. N. 910**

——— s. 195, cls. (*1*) (*b*), (*7*)—*Sanction for perjury—Appellate Court to which appeals do not ordinarily lie, hearing appeal by transfer—Jurisdiction of, to grant sanction for perjury, whether as original or as Appellate Court.* The offence of perjury is complete when the false statement is made in the Court of first instance and it is not re-committed in the Appellate Court by the production of the record or otherwise in appeal, so as to entitle the Appellate Court to grant sanction as an Original Court. And a Joint Magistrate to whose Court appeals from convictions by a Third-class Magistrate do not ordinarily lie but who hears an appeal from such Court by transfer from the District Magistrate cannot grant sanction for perjury committed before the Third-class Magistrate either as a Court of first instance or as an Appellate Court. *Ercma Variar* v. *Emperor, I. L. R. 26 Mad. 656*, referred to. *Bhadesar Tiwari* v. *Kamta Prasad, I. L. R. 35 All. 90*, not followed. ANANTHARAMAYA *v.* TUKKADU (1918).

I. L. R. 41 Mad. 787

——— s. 195 (*6*), (*7*) (*b*) (*c*)—

See SANCTION FOR PROSECUTION.

I. L. R. 45 Calc. 336

——— s. 196A—

See PENAL CODE (ACT XLV OF 1860), S. 120B . . **I. L. R. 40 All. 41**

——— ss. 197, 210, 215—*Committal proceeding—Evidence taken in absence of sanction to prose-*

CRIMINAL PROCEDURE CODE (ACT V OF 1898,—*contd.*

——— **ss. 197, 210, 215**—*concld.*

cute—Sanction produced before Magistrate on the day he passed an order committing the case—Committal order passed in view of the wishes of the parties and a Government Resolution—Order of committal not valid. The accused, a Vatandar Patil, was charged with the offences of harbouring an offender and taking a bribe from him. Enquiry into the case was instituted and the whole of the evidence was taken in absence of a sanction to prosecute. The Magistrate committed the case to the Court of Session, relying on a Government Resolution and yielding to the wishes of the parties. The sanction was produced before the Magistrate on the day he committed the case. The Sessions Judge referred the case to the High Court as he was of opinion that the commitment was illegal. *Held,* quashing the order of commitment, that owing to the absence of sanction on the whole of the proceedings before the Magistrate were without jurisdiction and totally invalid. *Held,* further, that the Magistrate was not competent to commit the case to the Court of Session solely by the wish of the parties and the terms of a Government Resolution. EMPEROR *v.* BHIMAJI ENKAJI (1917) . **I. L. R. 42 Bom. 172**

——— **s. 234**—*Misjoinder of charges.* The accused was tried on three charges of criminal misappropriation (s. 409, Indian Penal Code) as also a charge under s. 210, Indian Penal Code. The offence under s. 210 had relation to one of the charges of criminal misappropriation but not to the other two and it partly referred to matter unconnected with any of the said charges and the date of this offence was not within the year within which the offences of criminal misappropriation were alleged to have been committed. *Held,* that there was a misjoinder of charges. KING-EMPEROR *v.* RAJ NND O ROY (1918) . **22 C. W. N. 596**

——— **ss. 247, 259**—*Penal Code (Act XLV of 1860), ss. 352 and 504—Summons-case—Warrant case—Trial of both offences in one trial—Procedure to be followed—Absence of complainant at the hearing—Discharge of accused, effect of—Subsequent trial for the same offences, whether barred.* Where a complaint was preferred against a person for offences under ss. 352 and 504 of the Indian Penal Code committed in the course of the same transaction, the former offence being triable as a summons-case and the latter as a warrant-case, and the Magistrate discharged the accused owing to the absence of the complainant on the day of hearing, and a fresh complaint was preferred in respect of the same ofiences: *Held,* that the procedure to be followed in such a trial is the one provided for the trial of a warrant-case; and that the discharge of the accused did not amount to an acquittal of the offence under s. 352 of the Indian Penal Code and was not a bar to the subsequent trial for the same offence. *Rajnarain Koonwar* v. *Lala Tamoli Raut, I. L. R. 11 Calc. 91, Re Sobhanadri, I. L. R. 39 Mad. 503, Hossein Sardar* v. *Kalu Sardar, I. L. R. 29 Calc. 481,* and *In re Samsudin, I. L. R. 22 Bom. 711,* followed. RAGHAVALU NAICKER *v.* SINGARAM (1918).

1 I R. 41 Mad. 727

——— **s. 250**—

See PENAL CODE (ACT XLV OF 1860), s. 494 . . **I. L. R. 40 All. 615**

1. ——— *Compensation—Accused tried on two charges and acquitted on one, but convicted on the other.* S. 250 of the Code of Criminal Procedure is only applicable where the trying court discharges or acquits the accused altogether. It cannot be made use of where the accused, being tried on two charges is acquitted on one, but convicted on the other. *Mukti Bewa* v. *Jhotu Santra, I. L. R. 24 Calc. 53,* followed. MUHAMMAD ALI KHAN, *v.* RAJA RAM SINGH (1918).

I. L. R. 40 All. 610

2. ——— *Frivolous or vexatious accusation—Compensation—Against whom order for compensation can be made.* It is not necessary that the person against whom an order for compensation under s. 250 of the Code of Criminal Procedure is made should be the person who himself gives information to a Magistrate in consequence of which another is accused of an offence, provided that he is the person upon whose information an accusation is made. EMPEROR *v.* BAHAWAL SINGH (1917) . **I. L. R. 40 All. 79**

——— **s. 300**—*Person other than a juror holding communication with a juror after charge without Court's leave.* Where it was proved that after the charge had been delivered, a person other than a juror spoke to or held communicatinon with a member of the jury without the leave of the Court, *Held,* that that was sufficient to upset the verdict, and it was not relevant to consider whether the irregularity had in fact prejudiced the accused. It is a matter of great importance that s. 300 of the Criminal Procedure Code which is explicit in its terms should be observed. *R.* v. *Ketteridge, [1915] 1 K. B. 467,* referred to. BENI MADHAB KUNDU *v.* KING-EMPEROR (1918).

22. C. W. N. 740

——— **ss. 303, 437**—*Complaint—Summary dismissal of complaint—Order for further inquiry made without notice to show cause being given to accused. Held,* that it is not necessary to the setting aside of an order under s. 203 of the Code of Criminal Procedure, where the person against whom the complaint was made has never been called on to appear, that notice to show cause should be given to such person. *Angan* v. *Ram Pirbhan, I. L. R. 35 All. 78,* and *Hari Dass Sanyal* v. *Saritulla, I. L. R. 15 Calc. 608,* followed. EMPEROR *v.* LIAQAT HUSAIN (1917) . **I. L. R. 40 All. 138**

——— **s. 307**—

1. ——— *Jury, verdict of—Interference of High Court on reference when verdict not perverse.* Where the accused were tried on several charges, and the jury unanimously found them not guilty on all the charges but the Sessions Judge not accepting the verdict as to some of the charges referred the case to the High Court: *Held,* that in the circumstances of the case the verdict could not be said to be perverse or erroneous and the accused should be acquitted. ASGAR MONDAL *v.* KING-EMPEROR (1918) . **22 C. W. N. 811**

2. ——— *Reference to High Court by Sessions Judge on disagreement with jury—Scope of High Court's interference.* The accused was tried on charges under ss. 395, 411, 412, Indian Penal Code, and found not guilty by a majority of the jury. The Sessions Judge disagreeing with the jury referred the case to the High Court under s. 307, Criminal Procedure Code. The High Court on a consideration of the evidence

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 307—*concld.*

held that the guilt of the accused was not proved beyond reasonable doubt and acquitted the accused. EMPEROR *v.* CHANOO LAL BANIA (1918).

22 C. W. N. 1028

——— s. 342 (*4*)—

See WITNESS . **I. L. R. 45 Calc. 720**

——— s. 344—*Order of adjournment at the instance of a party—Liability to pay costs of the day.* In granting an adjournment at the instance of a party the Magistrate can order him to pay the costs of the day to the opposite side, under s. 344 of the Criminal Procedure Code, 1898, only where the circumstances are exceptional and where for some reason or another the ordinary method of conducting criminal cases must be departed from. *In re* ABDUL RAHIMAN (1917).

I. L. R. 42 Bom. 254

——— s. 345—

See COMPROMISE.

I. L. R. 45 Calc. 816

1. ——— *Compounding of an offence before filing complaint, whether lawful.* The compounding of offences mentioned in the first paragraph of s. 345, Criminal Procedure Code, is lawful even if it takes place before any complaint is filed in respect thereof in a Court and once a composition has been arrived at, it has the effect of an acquittal under the section so as to bar the trial of the offence. KUMARASAWMI CHETTI *v.* KUPPUSWAMI CHETTY (1918).

I. L. R. 41 Mad. 685

2. ——— *Composition of an offence with one of several accused persons, effect of.* The composition of an offence under s. 345 of the Criminal Procedure Code with one of several accused persons does not effect an acquittal of the others. *Chandra Kumar Das* v. *The Emperor, 7 C. W. N. 176,* dissented from. MUTHIA NAICK *v.* THE KING-EMPEROR (1917).

I. L. R. 41 Mad. 323

——— s. 350—*Procedure—Jurisdiction—Magistrate ceasing to have jurisdiction by reason of the transfer of a case pending before him to another Court—Evidence not necessarily to be reheard.* S. 350 of the Criminal Procedure Code applies as much to cases in which a Magistrate ceases to exercise jurisdiction so far as the particular case in question is concerned by reason of its transfer to another Court as to cases in which the Magistrate ceases to exercise jurisdiction by reason of his own death or transfer to another post. *Mohesh Chandra Saha* v. *Emperor, I. L. R. 35 Calc. 457, Kudruttulla* v. *Emperor, I. L. R. 39 Calc. 781,* and *Palaniandy Goundan* v. *Emperor, I. L. R. 32 Mad. 218,* followed. EMPEROR *v.* RAM DAS (1918).

I. L. R. 40 All. 307

——— s. 362—*Record of evidence recorded by Presidency Magistrate.* It is the duty of the Magistrate in a case which comes within s. 362, Criminal Procedure Code, to take a note of all the material facts whether they appear in the course of the examination-in-chief or in the course of cross-examination. AH FOONG CHINAMAN *v.* KING-EMPEROR (1918) . . . **22 C. W. N. 834**

——— s. 369—*Trial completed and sentence passed for offence under s. 379 of the Indian Penal Code—Trial continued on another charge under ss. 75 and 379 of the Indian Penal Code in the same case—Further trial is bad.* The accused was committed to a Court of Session on two charges, one under s. 379, and another under ss. 75 and 379 of the Indian Penal Code. The trial went on the first charge and ended in conviction and sentence. The second charge was next taken up in the same trial and a sentence was passed on the accused again. The accused having appealed. *Held,* that the subsequent proceedings on the second charge were not valid and should be set aside for when the judgment including the sentence was pronounced in the trial on the first charge, there was no power under s. 369 of the Criminal Procedure Code, to alter or review the same. EMPEROR *v.* MARI PARSU (1917) . . . . **I. L. R. 42 Bom. 202**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 369—*concld.*

——— s. 436—

1. ——— *Scope of section—Discharge, meaning of—Commitment to Sessions Court under the section—Accused tried and acquitted by competent Magistrate on charge framed—Competency of Sessions Court to direct commitment on another charge which in his opinion should have been framed.* The petitioner was tried and acquitted by a competent Magistrate on a charge of simple forgery under s. 465, Indian Penal Code. The Sessions Judge by an order under s. 436, Criminal Procedure Code, directed the commitment of the petitioner on a charge of forgery of a valuable security under s. 467, Indian Penal Code, with which he held the petitioner should have been charged. *Held, per* RICHARDSON, *J.,* that s. 436, Criminal Procedure Code, contemplated a case of discharge and the petitioner not having been properly or improperly discharged in respect of an offence under s. 467, Indian Penal Code, the Sessions Judge had no power to direct his commitment or to order a further inquiry under proviso (*b*) in respect of that offence. The acquittal of an accused on a charge framed does not necessarily imply that the Magistrate discharged him in respect of any other charge which might have been framed. The Magistrate must consciously do something or make some order which shows that in his opinion on the materials before him the accused should not be charged for that offence. The meaning of "discharge," and the general rule of the Code that a discharge should precede the framing of a charge were considered. *Per* TEUNON, *J.,* the Magistrate's order acquitting the accused of an offence under s. 465, Indian Penal Code, was tantamount to an order discharging the accused of the graver offence under s. 467, Indian Penal Code. The fact that no charge was framed and the Magistrate was not asked to frame a charge under the graver section was immaterial. ABDUL HAKIM *v.* BAZRUK ALI (1917).

22 C. W. N. 117

2. ——— *Penal Code (Act XLV of 1860), ss. 323, 354, 376, 511—Subordinate Magistrate taking cognizance on police charge-sheet—No mention of offence under ss. 376, 511, Indian Penal Code—Prosecution not pressing for committal before Magistrate—Order by District Magistrate directing committal—Validity of order—Reference by Sessions Judge—Quashing of commitment by High Court—Jurisdiction of District Magistrate.* Where a Subordinate Magistrate took cognizance of a case on a police charge-sheet charging the accused with

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 436**—*concld.*

offences of assault and hurt under ss. 354 and 323 Indian Penal Code, but no charge was made therein of the offence of attempt to rape, under ss. 376 and 511, Indian Penal Code, and the prosecution did not press for the framing by the Magistrate of a charge in respect of that offence, but the District Magistrate purporting to act under s. 436, Criminal Procedure Code, directed the Subordinate Magistrate to commit the accused to the Sessions for an offence under ss. 376 and 511, Indian Penal Code and the accused was so committed. *Held* (on a reference by the Sessions Judge), that the proceedings of the Subordinate Magistrate did not amount to an order of discharge on the major offence and the District Magistrate had no jurisdiction to pass an order under s. 436 of the Criminal Procedure Code directing the Subordinate Magistrate to commit the accused to the Sessions for the offence under ss. 386 and 511, Indian Penal Code. Commitment quashed and the Subordinate Magistrate directed to proceed with the trial of the minor offences. *Krishna Reddi* v. *Subbamma, I. L. R. 24 Mad. 136*, distinguished. SESSIONS JUDGE OF COIMBATORE *v.* MURAPPA GOUNDAN (1918).

I. L. R. 41 Mad. 982

——— **s. 437**—*Accused discharged by Magistrate—Order for further inquiry—Notice—Judicial, discretion—Practice.* Nothing in s. 437 of the Code of Criminal Procedure requires previous notice to be given to any accused person who has been discharged, before further inquiry into his case is ordered by a competent authority, that is, by the High Court, or the Sessions Judge or the District Magistrate. Nevertheless as a matter of judicial discretion it is advisable that previous notice should issue when the matter for consideration is the setting aside of an order of discharge in favour of the accused person who has been actually before the Court to answer the facts alleged against him. *Queen-Empress* v. *Ajudhia, I. L. R. 20 All. 339*, referred to. EMPEROR *v.* ABDUL LATIF (1918).

I. L. R. 40 All. 416

——— **s. 438**—

See PENAL CODE (ACT XLV OF 1860), s. 266. **I. L. R. 40 All. 84**

——— **ss. 439, 476**—*Revision—Jurisdiction of High Court—Order for prosecution passed by a District Magistrate instead by a Collector acting as a Court of Revenue.* The Collector of a district in deciding a Revenue appeal came to the conclusion that a receipt filed in the case was not genuine. He took no action at the time as a Court of Revenue, but subsequently acting as District Magistrate he held an inquiry into the matter of the receipt and sent the person whom he thought to be concerned with the making of the receipt to a subordinate magistrate for trial. *Held*, that the High Court had jurisdiction to interfere in revision and that the order passed by District Magistrate was *ultra vires*. EMPEROR *v.* RAM SAHAI (1917).

I. L. R. 40 All. 144

——— **s. 476**—*Jurisdiction—Order for prosecution of persons not parties to a proceeding before the Court.* A Court in taking action under s. 476 of the Code of Criminal Procedure is not restricted, as regards the person against whom an order may be made, to the parties to a proceeding pending before it. *Jadunandan Singh* v. *Emperor, I. L. R.*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 476**—*concld.*

37 Calc. 250, dissented from. EMPEROR *v.* GANGA RAM (1917) . . . **I. L. R. 40 All. 24**

——— **ss. 476 and 478**—*Commitment made by a Munsif in the United Provinces to the Court of a Sessions Judge in the United Provinces in respect of offences alleged to have been committed in Bengal.* Where in the course of a judicial proceeding before the Munsif of Fatehabad in the district of Agra certain offences under ss. 193, 209, 216, 467 and 471 of the Indian Penal Code, which appeared to have been committed in Bengal were brought under the notice of the Court, and the Munsif committed the persons suspected of such offences for trial to the Court of Session at Agra. *Held*, that the Court had jurisdiction under s. 478 read with s. 476 of the Code of Criminal Procedure to make the commitment. EMPEROR *v.* KHUSHALI RAM (1917) . . . **I. L. R. 40 All. 116**

——— **s. 478**—*Procedure—Commitment made by Munsif without following procedure laid down in the section—Commitment quashed.* A Munsif holding an inquiry under the latter portion of s. 478 of the Code of Criminal Procedure with a view to making a commitment to the Court of Session is bound to follow substantially the provisions of Chap. XVIII of the Code. Where in such circumstances the Munsif neither examined the witnesses in the presence of the accused nor explained the charge to them, the commitment was quashed as being bad in law. EMPEROR *v.* BABU PRASAD (1917) . . **I. L. R. 40 All. 32**

——— **s. 494**—*Withdrawal of prosecution by public prosecutor with leave of Court—Court must record reasons for granting leave—S. 170—Power of Superintendent of police to control discretion of investigating police officer.* In according or withholding consent to an application by the public prosecutor for withdrawal under s. 494 (*a*), the Court acts in a judicial capacity and for its order, as for every order judicially made, the Court, must give and record its reason so that the High Court may be in a position to say whether the discretion vested in the Court has been properly exercised. *Quære*: Whether the discretion vested in the investigating police officer by s. 170, Criminal Procedure Code, can be controlled by the Superintendent of Police. UMESH CHANDRA ROY *v* SATISH CHANDRA ROY (1917) . . **22 C. W. N. 69**

——— **s. 514**—*Forfeiture of bond—Bond for appearance taken under the City of Bombay Police Act (Bom. IV of 1902), ss. 106, 107—Jurisdiction of Chief Presidency Magistrate to order forfeiture.* The Presidency Magistrate of Bombay has no jurisdiction, under s. 514 of the Criminal Procedure Code, to order forfeiture of bonds taken under ss. 106 and 107 of the City of Bombay Police Act, 1902. CRAWFORD, *In re* (1918).

I. L. R. 42 Bom. 400

——— **s. 517**—*Power under, to confiscate property produced before Court—Conviction for gambling under ss. 6 and 7 of Madras Towns' Nuisances Act (III of 1889), ss. 6 and 7—Confiscation of money not actually used for gambling but found on gambler's person, validity of.* On a conviction for gambling under ss. 6 and 7 of the Madras Town's Nuisances Act (III of 1889), an order to confiscate money found with the gamblers can only be passed under s. 517 of the Criminal Procedure Code; and only

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— s. 517—*concld.*

in respect of such money as been actually employed in gambling and not in respect of other money found on the person of the gambler. *Per* ALYING, *J.* Although s. 517 is in its terms wide, confiscation of property 'produced' before a Criminal Court is not justifiable unless it has been used for an offence, or an offence has been committed regarding it. *Per* PHILLIPS, *J.* The powers under s. 517 are very large and the Magistrate's discretion is wide and the section empowers him to make such order as he thinks fit for the disposal of property 'produced' before him; but the discretion must be exercised judicially and not arbitrarily. *Re* APPAJI AYYAR (1918) . **I. L. R. 41 Mad. 644**

——— s. 520—*Order as to disposal of property—Order can be varied only by a Court of Appeal or Court of Revision entitled to act in the case.* In acquitting an accused person of the charge of theft of cattle, the trying Magistrate ordered the cattle to be returned to him. This order was modified by the Sessions Judge, who ordered the cattle to be given up to the complainant. The accused having applied to the High Court. *Held*, that the Sessions Judge had no jurisdiction, under s. 520 of the Criminal Procedure Code, to make the order he had made, since he was neither a Court of Appeal nor a Court of Revision in the case. *In re Laxman Rangu Rangari, I. L. R. 35 Bom. 253*, followed. *Queen-Empress* v. *Ahmed, I. L. R. 9 Mad. 448*, dissented from. *In re* KHEMA RUKHAD (1918).
I. L. R. 42 Bom. 664

——— s. 562—*Penal Code (Act XLV of 1860) s. 420—S. 562, whether applicable to a conviction under s. 420.* The word "cheating" in s. 562 of the Code of Criminal Procedure does not cover the form of cheating punishable under s. 420 of the Indian Penal Code. *Emperor* v. *Ramjan Dadubhai, 16 C. L. J. 781*, approved and followed. *Harnarain* v. *Ramji Das, 12 All. L. J. 465*, dissented from. SUNDARAM AYYAR *v.* THE KING-EMPEROR (1917)
I. L. R. 41 Mad. 533

CRIMINAL PROSECUTION.

——— agreement to stifle—

See CONTRACT ACT (IX OF 1872), S. 24.
I. L R. 42 Bom. 339

CRIMINAL TRESPASS.

See PENAL CODE (ACT XLV OF 1860), S. 441 . . **I. L. R. 40 All. 221**

CROSS-OBJECTIONS.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 22 . **I. L. R. 40 All. 536**

See COURT FEES ACT (VII OF 1870), SCH. I. ART, 1 . **I. L. R. 40 All. 93**

CROWN DEBT.

——— priority of—

See ADMINISTRATION.
I. L. R. 45 Calc. 653

CROWN GRANTS ACT (XV OF 1895).

——— s. 2—

See HINDU LAW—INHERITANCE.
I. L. R. 40 All. 470

CRUELTY.

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 40 All. 332

CULPABLE HOMICIDE.

See PENAL CODE (ACT XLV OF 1860), SS. 304 AND 325.
I. L. R. 40 All. 103

See PENAL CODE (ACT XLV OF 1860), SS. 325, 300, EXCEPTION 4.
I. L. R. 40 All. 686

CU STODY.

See EVIDENCE ACT (I OF 1872), S. 26.
I. L. R. 42 Bom. 1

CUSTOM.

See CUSTOM OR USAGE.
I. L. R. 45 Calc. 285

See PRE-EMPTION.
I. L. R. 40 All. 617, 626

——— Bombay Silver Market.—

See CONTRACT . **I. L. R. 42 Bom. 224**

——— finding as to existence of—

See CIVIL PROCEDURE CODE, S. 100.
I. L. R. 41 Mad. 374

——— Up-country cotton merchants.—

See CONTRACT ACT (IX OF 1872), SS. 178, 179 . . **I. L. R. 42 Bom. 205**

1. ——— *Uncertainty—Inundated lands—Remission of rent.* Where in a suit for rent, the tenants set up a custom of total remission of rent on the ground that a certain portion of the land was subject to inundation resulting in the destruction of crops, the extent of such destruction not being specific, and that crops were so destroyed during one of the years for which rent was claimed: *Held*, that such custom was both unreasonable and uncertain and, consequently unenforceable in law. *Tyson* v. *Smith, 9 A. & E. 406, Mahamaya Debi* v. *Haridas Haldar, I. L. R. 42 Calc. 455, Salisbury* v. *Gladstone, 9 H. L. C. 692*, referred to. SHIBNARAIN MOOKERJEE *v.* BHUTNATH GUCHAIT (1917).
I. L. R. 45 Calc. 475

2. ——— *Custom and usage Origin of custom—Existence from time immemorial—Grant purporting to create family-custom—Proof of long line of succession.* Whereby a confirmatory grant, dated the 4th February 1797, a Raja, after confirming a previous grant of a similar nature by his predecessor, gave to a Rani certain properties as *Joutuk Ranian Britti* and laid down in the sanad of grant that she and the future Ranis were not entitled to sell or make a gift of the *Britti* but to enjoy the profits only for life, and prescribed a rule of succession to the effect that only Ranis of the family were to succeed to the properties for life, and no Rajas could claim or alter the course of succession as aforesaid. *Held*, that the grant in so far as it laid down a rule of succession was absolutely void, as it prescribed a right of succession unknown to Hindu Law. It was also void as it purported to create successive life estates in favour of unborn persons, the estate itself being undisposed of. Even if the rule of succession laid down in the sanad of 1797, had actually been followed, it could not be treated as binding upon the family unless it had ripened into a family custom. *Held*, also, that in order to establish a custom it must be shown

CUSTOM—*contd.*

that the custom had existed from time immemorial and where the custom set up was peculiar only to a single family the rule was more strictly enforced than ever. A family custom of proved antiquity was entitled to be recognised by the Courts, irrespective of the position and rank of the family but where the origin of custom was known it must be shown that there had been a long line of succession in accordance with the usage. *Samrun Singh* v. *Khedun Singh, 2 S. D. A. Sel. Rep. 116, Pertab Deb.* v. *Surup Deb Raikut, 2 S. D. A. Sel. Rep. 249, Ramalakhshmi Ammal* v. *Sivanananthа Perumal, Sethurayar, 12 B. L. R. 396 ; 14 Moo. I. A. 570; Garuradhwaja Prasad Singh,* v. *Superundhwaja, Prasad Singh, I. L. R. 23 All. 37 ; L. R. 27 I. A. 238, Prince Mahomed Buktyar Shah* v. *Rani Dhojamani, 2 C. L. J. 20,* referred to. AMBALIKA DASI *v.* APARNA DASI (1918) . **I. L. R. 45 Calc. 835**

3. ——————— *Proof of custom modifying Mahomedan Law—Custom excluding women from share of inheritance of paternal relation —Bombay Regulation IV of 1827, s. 26—Punjab Laws Act, 1872, s. 5—Essentials in proving custom —Family custom—Position and relationship of members of family—Denial by prominent member of family of existence of custom—Failure to produce Revenue Records as evidence.* On the death of a wealthy Shia Mahomedan in Sind, intestate and leaving no widow or child, the nearest surviving relations were a nephew (the plaintiff-appellant) and a sister and her son, the first and second defendants-respondents. The appellant's case was that the question as to the rights of inheritance was governed, not by Mahomedan Law, but by a custom which excluded women from any share in the inheritance of a paternal relation. *Held,* that under s. 26 of Bombay Regulation IV of 1827, which had been extended to Sind, no presumption can be made in favour of the existence of a usage or custom where it is known that such usage or custom is prevalent, but it was incumbent on the appellant to allege and prove the custom on which he relied. *Daya Ram* v. *Sohel Singh, 41, Punj.-Rec. 390, per* ROBERTSON, *J.,* is a case under s. 5 of the Punjab Laws Act, 1872, the words of which are more strongly in favour of the appellant's contention than those of s. 26 of Bombay Regulation IV of 1827. Custom binding inheritance in a particular family has long been recognised in India. See *Soorendro Nath Roy* v. *Heeramonee Burmoneah, 12 Moo. I. A. 81 ;* and the principles applicable to the proof of customs in England were not to be applied in considering such a custom as that claimed in the present suit. Nor was it necessary to reject as useless for proving such a custom all the instances mentioned by CROUCH, *J.,* in his judgment in the Judicial Commissioner's Court. An example of each of the conditions there laid down ought certainly to be established by some witness, but it was not necessary that all should be proved in every case, as that might greatly weaken the evidence by tradition to which in a custom of the character under consideration great weight was due. *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar, 14 Moo. I. A. 570,* referred to as to what was essential to the proof of special usages modifying the ordinary law of succession. *Held,* also, assuming that the custom relied on, which had not been precisely defined by the appellant, was a custom by which in the event of intestacy daughters of the deceased were excluded in favour of their brothers, and sisters in favour of male paternal relations, that such a custom had not on the evidence been sufficiently proved. The position and relationship of the different members of the family must always be considered in determining whether claims were not met because the rights to which they related did not exist, or whether they were put on one side because in the circumstances there was no need for asserting them. *Mirabivi* v. *Villayanna, I. L. R. 8 Mad. 464,* referred to. The fact that prominent members of the families concerned denied that such a custom as alleged existed; and the non-production of the Revenue Records, one of which showed a division according to Mahomedan Law, and not according to the custom here set up, were both evidence strongly against the custom. In the opinion of their Lordships though there was much in history for the custom, and some evidence by which it received support, yet on the whole the evidence fell short of the standard to which it must attain in order to succeed in altering the devolution of property according to Mahomedan Law, to a devolution determined by a family custom. ABDUL HUSSEIN KHAN *v.* SONA DERO (1917).
I. L. R. 45 Calc. 450

CUSTOM OR USAGE.

——————— *Facts proving existence of custom or usage whether questions of law—Actual proof thereof question of fact—Second Appeal.* The question whether the facts found in any given instance prove the existence of the essential attributes of a custom or usage is a question of law which may be discussed in second appeal; the question whether such a state of facts has been proved by the evidence is merely a question of fact. *Kakarla Abbayya* v. *Raja Venkata Papayya Rao, I. L. R. 29 Mad. 24,* dissented from. KAILASH CHANDRA DATTA *v.* PADMAKISORE ROY (1917).
I. L. R. 45 Calc. 285

CUSTOMARY LAW OF SOUTH KANARA.

——————— *Kuzhikanam lease—Compensation for improvements—Right of tenant to possession until payment—Possession by tenant after period of lease, nature of—Possession, if adverse Notice to quit, if necessary—Customary law of Malabar—Malabar Compensation for Tenants Improvements Act (Madras Act I of 1900), principles of, if applicable.* Under the customary law of South Kanara, a *kuzhikanam* lessee is, as in Malabar, entitled to remain in possession of the holding after the expiry of the period fixed in the lease until he is paid the value of the improvements; consequently he does not acquire title by adverse possession by remaining in possession of the lands for more than twelve years after the expiry of the lease. *Srinivasa Pillai* v. *Venkatammal, 24 Mad. L. J. 296,* and *Kummatha Vittil Kunhi Kuthalai Haji* v. *Reverend Antoni Goveas,* (1913) *Mad. W. N. 339,* referred to. *Subbraveti Ramiah* v. *Gundala Ramanna, I. L. R. 33 Mad. 260,* distinguished. A *kuzhikanam* lessee who remains on the land after the period fixed in the lease, awaiting the payment of compensation for improvements, is not holding over as a tenant, and in the absence of evidence of assent by the landlord to the continuance of the tenancy, is not entitled to a notice to quit. S. 5 of the Malabar Tenants Improvements Act (I of 1900) only embodies the customary law of Malabar and South Kanara. THEMA *v.* KUNHI PATHNOMMA (1917) . . . **I. L. R. 41 Mad. 118**

D

DAMAGES.

See CONTRACT . **I. L. R. 42 Bom. 499**

See TORTS . . **I. L. R. 41 Mad. 538**

——— **measure of—**

See CONTRACT . **I. L. R. 42 Bom. 224**

See CONTRACT ACT (IX OF 1872), S. 73, ILL. (*a*) . . **I. L. R. 41 Mad. 709**

DARPATNI.

——— **conditions in—**

See LEASE . . **I. L. R. 45 Calc. 940**

DATE OF SALE.

See SALE . . **I. L. R. 45 Calc. 151**

DEBT.

See TIME-BARRED DEBT.
I. L. R. 42 Bom. 444

——— **son's obligation to pay—**

See HINDU LAW—DEBT.
I. L. R. 41 Mad. 136

DECLARATION.

——— **suit for—**

See SPECIFIC RELIEF ACT (I OF 1877), S. 42 . . **I. L. R. 42 Bom. 438**

DECLARATORY DECREE.

——— *Execution by Hindu widow, in possession of her husband's estate, of deed purporting to confer absolute interest in property to one reversioner to the exclusion of others—Right of excluded reversioners to declaration that the deed is not binding on them—Specific Relief Act (I of 1877), s. 42, ill. (e).* Where a Hindu widow (defendant 1) in possession of her husband's estate, had executed a deed purporting to confer the absolute interest in the property on one of the reversioners (defendant 3) to the exclusion of others who claimed to be also reversionary heirs (plaintiffs.) *Held*, that under s. 42, illustration (*e*) of the Specific Relief Act (I of 1877) the plaintiffs who as heirs ranked equally with defendant 3 were entitled to a declaration that the deed was not binding on them, notwithstanding that they may never get any title because events may preclude them from doing so, and though such a declaration involves a finding that the plaintiffs are reversionary heirs. *Janaki Ammal* v. *Narayanasami Aiyer, I. L. R. 39 Mad. 634; L. R. 43 I. A. 207*, distinguished. SAUDAGAR SINGH *v.* PARDIP NARAYAN SINGH (1917).
I. L. R. 45 Calc. 510

DECREE.

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 48.
I. L. R. 42 Bom. 367

See INSTALMENT DECREE.
I. L. R. 42 Bom. 304

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 181 AND 182.
I. L. R. 42 Bom. 309

——— **against a deceased person—**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 7 . **I. L. R. 40 All. 423**

DECREE—*contd.*

——— **construction of—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5, AND 10.
I. L. R. 40 All. 109

——— **for redemption—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47 . **I. L. R. 42 Bom. 246**

1. ——— *Decree assignment of, if may be questioned as benami in execution proceeding—Decree assigned to judgment-debtor's pleaders—Effect—Pleader trustee, bound to reconvey on terms—Proper procedure, institution of suit.* The assignment of a decree to the pleader of the judgment-debtor does not extinguish tre judgment-debt and release the judgment-debtor from liability. The pleader holds the decree on trust for his client and is bound, if called upon by the latter, to assign the decree to him, but no Court will decree such an assignment except upon equitable terms. A question that the assignee of a decree is *benamidar* for some body else cannot be gone into in execution proceeding. When the judgment-debtors alleged that the assignee was a *benamidar* for their pleader. *Held*, that it was not practicable in execution proceedings to go behind the decree and alter the liability of the parties, after investigation of the sum which would be equitably payable by the judgment-debtor to the assignee of the decree to entitle him to obtain a reconveyance thereof. This should be the subject of investigation in a suit, the execution proceedings being stayed to enable the judgment-debtor to institute such a suit. NAGENDRABALA DASSI *v.* DEBENDRA NATH MAHISH (1917).
22 C. W. N. 491

2. ——— *Conditional decree ordering a plaintiff to make a payment within a specified time—Court not competent to extend time limited—Civil Procedure Code (1908), s. 114—Review of judgment—Jurisdiction.* Except in the case of mortgage decrees, where a Court by its decree orders a party to make a payment, or take certain action within a specified time and provides that certain detrimental consequences shall follow in the event of non-compliance with its order, the Court itself has no jurisdiction to extend the time limited by the decree, save on an application for review under s. 114 read with O. XLVII, r. 1, of the Code of Civil Procedure. *Naik Ram* v. *Bhagwan Chand, 15 A. L. J. 511*, overruled. SAJJADI BEGAM *v.* DILAWAR HUSAIN (1918).
I. L. R. 40 All. 579

3. ——— *Instalment decree—Entire decretal debt to become payable on failure to pay any one instalment—Application to execute the decree three years after default—Limitation.* An instalment decree was made on June 28, 1909. It provided that the debt be paid in eight annual instalments and that on failure to pay any one of the instalments before the next had become due, the creditor could call in the whole amount of debt with interest at the agreed rate. It was found that no instalment was ever paid. In September 1915 the creditor presented the Darkhast but the lower Courts held it time-barred. On appeal to the High Court it was contended that it was optional with the creditor to waive all breaches on the part of the debtor to fulfil his obligations under the instalment decree and so at the end of eight years, the creditor could sue for at least three instalments in arrears then due. *Held*, that on the terms of the

DECREE—*concld.*

decree a complete legally enforceable right had accrued to the judgment-creditor on failure to pay the first annual instalment in June 1910, and the period of limitation allowed to him within which to enforce it was three years and no longer. The *darkhast* was, therefore, barred by limitation. RAICHAND MOTICHAND *v.* DHONDO LAXUMAN (1918) . . . . **I. L. R. 42 Bom. 728**

DECREE FOR INJUNCTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2 (*11*), 53.
I. L. R. 42 Bom. 504

DECREE-HOLDER.

——— **status of—**

See SALE . . **I. L. R. 45 Calc. 294**

DEFAMATION.

See EVIDENCE ACT (I OF 1872), S. 132.
I. L. R. 40 All. 271

See LIBEL . . **I. L. R. 40 All. 341**

DEFAULT.

——— **in filing annual list of members—**

See COMPANY . **I. L. R. 45 Calc. 490**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——— **s. 48**—*The "words period of limitation prescribed" in the section, construction of—Whether the words refer only to the period expressly provided in the Limitation Act—Decree—Execution—Conciliator's certificate—Civil Procedure Code (Act V of 1908), s. 48—Limitation.* A decree was obtained on October 28, 1899, and was followed by three *darkhasts* which had been made within the time allowed. The fourth *darkhast* was presented on August, 23, 1913, that is, more than twelve years after the decree. In July 1911, the judgment-creditor applied for a conciliator's certificate, the suit being governed by the Dekkhan Agriculturists' Relief Act, 1879. The certificate was obtained on March 29, 1913. A question being raised whether under s. 48 of the Dekkhan Agriculturists' Relief Act, 1879, the judgment-creditor was entitled to exclude the interval of time occupied in obtaining the certificate in computing the period of limitation prescribed by s. 48 of the Civil Procedure Code, 1908. *Held*, answering the question in the affirmative, that the words "the period of limitation prescribed for any suit or application" in s. 48 of the Dekkhan Agriculturists' Relief Act, 1879, were general and comprehensive and referred to the limitation prescribed in any law for the time being in force. They could, therefore, control or modify the period of time allowed not only in the statute of limitation but also that in s. 48 of the Civil Procedure Code, 1908. *Dayaram* v. *Laxman, 13 Bom. L. R. 284*, distinguished. SHIDAYA VIRBHADRAYA *v.* SATAPPA BHARMAPPA (1918).
I. L. R. 42 Bom. 367

DELAY.

See LIMITATION ACT (IX OF 1908) SS. 5, 14 . . **I. L. R. 42 Bom. 295**

——— **in filing appeal—**

See AMENDED LETTERS PATENT, CL. 15.
I. L. R. 42 Bom. 260

DEPOSITION.

——— *Admissibility of deposition when not taken in accordance wih law on subsequent trial for abetment of forgery and of user—Deposition signed by Judge and witness—No cross-examination on the point at the trial—Presumption of compliance with the law—Civil Procedure Code (Act V of 1908)—O. XVIII, rr. 5, 6—Evidence Act (I of 1872), ss. 80, 91.* The provisions of O. XVIII, rr. 5 and 6 of the Civil Procedure Code (Act V of 1908) are directory, and non-compliance therewith does not render the deposition inadmissible on a subsequent trial of the deponent either for giving false evidence or for abetment of forgery and of dishonest user of a bond proved by him in the course of a civil suit. *Empress* v. *Mayadeb Gossami, I. L. R. 6 Calc. 762, Kamatchinathan Chitty* v. *Emperor, I. L. R. 28 Mad. 308*, and *Emperor* v. *Jogendra Nath Ghose, I. L. R. 42 Calc. 240*, commented on *Bogra* v. *Emperor, I. L. R. 34 Mad. 141*, approved. If a deposition has not been read over to the witness, in the presence of the presiding Judge, it does not prove itself under s. 80 of the Evidence Act, but it may still be proved in some other way, *e.g.*, by the Judge who recorded it or by the admission of the deponent. S. 91 of the Evidence Act, even if it covers deposition, merely excludes oral evidence of its contents, but does not make the document inadmissible in evidence, nor does it deal with the question of its mode of proof otherwise. Where the deposition bore the signatures of the presiding Judge and of the deponent in his own vernacular, and the Judge and a pleader for the defendant, on whose behalf the appellant had deposed, were examined at the Sessions trial, but not cross-examined by the latter to show that the deposition had not been read over to him in the presence of the presiding officer, and there was nothing to the contrary on record of the Sessions trial. *Held*, that the inference was that the deposition had been so read over to the deponent. *Per* BEACHCROFT, *J.* A Court is not precluded from ascertaining from the document itself what is in it merely because the contents may not in fact be correct. Failure to ensure the accuracy of the record may create doubt as to the correctness of its contents, but does not affect its admissibility when it is otherwise proved. ELAHI BAKSH KAZI *v.* EMPEROR (1918) . . **I. L. R. 45 Calc. 825**

DESHPANDEGIRI CASH ALLOWANCE.

See LIMITATION ACT (IX OF 1908), S. 7
I. L. R. 42 Bom. 277

DESIGN.

——— *Wrist-watch band—Registration—Application by outside party to expunge—Cancellation of registration by Controller—Jurisdiction of Controller—New and original design—Shape and configuration—Ornamentation and utility—Analogous designs—Different purposes and dissimilar use—Motion to the High Court by registered proprietor—Other specific and adequate legal remedy available—Specific Relief Act (I of 1877), s. 45—Patents and Designs Act (II of 1911), ss. 62, 64, 67.* G registered a design for a wrist-watch band, which he called the "Novelty" band. Subsequently Messrs. B. & Co. copied the design and on threat of legal proceedings by G, applied to the Controller of Patents and Designs under s. 62 or the Patents and Designs Act for an order to remove the design from the register. This the Controller did after having issued notice on G and having heard both parties. G then in an application,

DESIGN—*concld.*

entitled "In the matter of s. 45 of the Specific Relief Act and in the matter of the Indian Patents and Designs Act, 1911," moved the High Court for an order that the Controller had no jurisdiction to remove the registration of the design and that he should be required to restore the design to the register on the ground that the design was new and original. The Court dealt with the matter under s. 64 of the Indian Patents and Designs Act and discharged the Rule, Messrs. B. & Co. contending that the design in question had been anticipated by a bracelet produced by Messrs. C. & K. On appeal by the petitioner. *Held*, that the Controller had no jurisdiction to cancel the registration, and under the Act the proper and ordinary way of expunging the registration of a design was to apply to this Court under s. 64 of the Patents and Designs Act. *Held*, also, that s. 62 of the Patents and Designs Act was limited to applications by the registered proprietor, or by some person in whom his interest was vested, and the action of the Controller was not justified by that section. *Held*, also, that the Court had no power to revise the Controller's decision under s. 64. *Held*, also, that this application, which was made under s. 45 of the Specific Relief Act, was not barred by s. 64 of the Patents and Designs Act. *Held*, also, that the application of the shape of the "Novelty" band to a watch to be worn on the wrist was for a purpose so different from and for a use so dissimilar to the purpose of the bracelet, that the design in question might be said to be original. *Per* SANDERSON, *C. J.* The shape and configuration of the metal band taken by itself cannot be said to be new or original. *Per* WOODROFFE, *J.* A wrist band used to carry an ornament such as that produced by Messrs. Cooke and Kelvey and a wrist band to carry a watch do not appear to me to be so analogous as to deprive the applicant of his claim to novelty. Further, the band is original and differs from the other band produced, by its circular shape, according to which it passes at the back of the watch, and as a consequence of that produces a flattening. GAMMETER *v.* THE CONTROLLER OF PATENTS AND DESIGNS. (1917).
I. L. R. 45 Calc. 606

DIRECTOR.

———— **liability of—**

See COMPANY.
I. L. R. 45 Calc. 486, 490

———— **of the Company—**

See COMPANY . **I. L. R. 42 Bom. 264**

DISCHARGE.

See CRIMINAL PROCEDURE CODE, S. 437
I. L. R. 40 All. 416

DISCOVERY.

See MISDIRECTION.
I. L. R. 45 Calc. 557

See REVIEW . **I. L. R. 45 Calc. 60**

DISCRETION.

See COSTS . . **I. L. R. 42 Bom. 327**

DISCRETION OF COURT.

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1; S. 115.
I. L. R. 40 All. 612

See CONTRACT ACT (IX OF 1872), S. 65.
I. L. R. 40 All. 558

DISCRETION OF COURT—*concld.*

See PARTNERSHIP.
I. L. R. 42 Bom. 380

DISMISSAL FOR DEFAULT.

See APPEAL . **I. L. R. 45 Calc. 638**

DISMISSAL OF SUIT.

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 45 Calc. 780

DISSOLUTION OF PARTNERSHIP.

See PARTNERSHIP.
I. L. R. 42 Bom. 380

DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

———— **s. 96, sub-ss. 1, 2, 3 and 4**—*Permission to build a privy granted under sub-s. (2)—Subsequent order by the Municipality revoking the permission—Legality of the order.* The plaintiff applied to the Municipality on December 1, 1913, for permission to build a privy on his own land. The permission was granted by the Municipality on 22nd December under sub-s. 2 of s. 96 for the District Municipalities Act, 1901. On January 8, 1914, the Municipality acting on the resolution of the Managing Committee gave notice and passed an order to the plaintiff not to build the privy until further orders. The plaintiff having sued for the cancellation of the order of January 8, 1914, as *ultra vires*. *Held*, that the order was not legal in the absence of any power to cancel the permission once granted under sub-s. 2 of s. 96 of the District Municipalities Act, 1901. *Emperor* v. *Kareen Ranjan, 19 Bom. L. R. 65*, followed. VITHAL DHONDDEV *v.* THE ALIBAG MUNICIPALITY (1918) . . . . **I. L. R. 42 Bom. 629**

DISTRICT MUNICIPALITIES ACT (MAD. IV OF 1884).

———— **ss. 172, and 173—**

See TORTS . **I. L. R. 41 Mad. 538**

DIVORCE.

———— *Co-respondent, absence of—Leave of Judge for dispensing with co-respondent, when to be obtained—Jurisdiction of Court, in case of want of such leave—Matrimonial Causes Act of 1857 (20 & 21 Vict. c. 85), s. 28—Divorce Court Rules (English) 4, 5 and 6—Indian Divorce Act (IV of 1869), ss. 7, 11.* Where the husband was petitioner for divorce but could not name the alleged co-respondents (the Master having issued citation), and at the hearing applied for leave to dispense with the co-respondents. *Held*, that the direction for such leave must be by application to the Judge on motion founded on affidavit *before the hearing* of the petition. *Held*, further, that the Court had no jurisdiction to entertain the petition where such leave had not been obtained. Cox *v.* Cox (1910).
I. L. R. 45 Calc. 525

DIVORCE ACT (IV OF 1869).

———— **ss. 7, 11—**

See DIVORCE . **I. L. R. 45 Calc. 525**

DIVORCE COURT RULES (ENGLISH).

———— **rr, 4, 5, 6—**

See DIVORCE **I. L. R. 45 Calc 525**

DOCUMENT.

See EVIDENCE ACT (I OF 1872), S. 92
I. L. R. 42 Bom. 512

——— **admissibility of—**

See EVIDENCE ACT (I OF 1872), S. 68
I. L. R. 40 All. 256

DOCUMENTARY EVIDENCE.

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 45 Calc. 878

DVYAMUSHYAYANA ADOPTION.

See HINDU LAW—ADOPTION.
I. L. R. 42 Bom. 277

E

EASEMENT.

See LIMITATION ACT (IX OF 1908), S. 20; SCH. I, ART. 144.
I. L. R. 40 All. 461

EASEMENTS ACT (V OF 1882).

——— **ss. 2 (c), 17 (c)**—*Non-riparian owner—Right to the flow of river water over another's lands—Ancient and uninterrupted user—Presumption of a lost grant—Prescription.* The plaintiff sued for a declaration that he had a right to take the water of a river for cultivating his lands by making it flow over the paddy lands of the defendants. The facts proved showed that from time immemorial the plaintiff and his ancestors as owners of certain non-riparian lands had been taking water from the river at or about a certain spot on the river banks, and thence over the lands of the defendants successively till the plaintiff's lands were reached. The defendants' objection was that the right claimed was really one "to surface water not flowing in a stream" and hence could not be acquired as an easement under s. 17 (*c*) of the Indian Easements Act, 1882, nor be the subject of a presumed lost grant. *Held* (*per* BEAMAN, *J.*), that the plaintiff having acquired the right claimed by him before the Indian Easements Act came into force, and having enjoyed such right from time immemorial, the case was saved by s. 2, cl. (*c*) of the Act. *Held* (*per* MARTEN, *J.*), (i) that s. 17 (*c*) of the Act did not apply as the plaintiff's claim was to river water and not to mere surface water on the defendant's lands; (ii) alternatively, that the plaintiff was protected by s. 2 (*c*) if he could show that he had acquired any legal right before the Act came into force; (iii) that the right he claimed could have been the subject of a grant and had a lawful origin, notwithstanding that such grant involved the passage of river water over the defendant's lands in no definite channel and that the plaintiff was a non-riparian owner; (iv) that consequently a lost grant could be presumed, and that having regard to the immemorial user it ought to be presumed, and therefore the plaintiff was legally entitled to the right he claimed. *Per* MARTEN, *J.* "The presumption of a lost grant is one which may be made in India as well as in England. The presumption arises out of the strong desire of the Courts to find a legal origin for an ancient and uninterrupted user. The presumption may be rebutted like other presumptions. It also requires certain conditions and one is that the right could have been the subject of a grant." JANARDAN GANESH *v.* RAVJI BHIKAJI (1917).
I. L. R. 42 Bom. 288

EASEMENT ACT (V OF 1882)—*concld.*

——— **s. 2 (c), 17 (c)**—*concld.*

——— **s. 15**—*Easements—Prescription against Government—Right of way, and to surface water over land belonging to Government—Enjoyment for thirty or forty years against Government—Assignment, by Government to private person—Suit against latter within two years of assignment—Right of easement against assignee, whether acquired by prescription—"Belongs to Government" in s. 15 of the Easements Act, meaning of.* Where an easement had been exercised by the plaintiff over land belonging to Government for thirty or forty years before the land was assigned by the Government to the defendant, and the plaintiff sued within two years of the assignment to enforce the right of easement against the defendant. *Held*, that the plaintiff had not acquired a right to the easement by prescription against the defendant. The words "belongs to Government" in the last paragraph of s. 15 of the Indian Easements Act (V of 1882), must refer not to the time of suit but to the time during which the easement is enjoyed. SRINIVASA UPADYA *v.* RANGANNA BHATTA (1917).
I. L. R. 41 Mad. 622

——— **s. 24**—*Accessory easement—Extension of the doctrine of accessory easement.* The plaintiff and the defendant owned neighbouring houses. The wall of the plaintiff's house abutted on the defendant's land. The plaintiff had acquired an easement of discharging rain water from eaves of his roof on to the defendant's land. On the strength of the easement the plaintiff sued for an injunction to restrain the defendant from making any use of his land which would prevent the plaintiff from going upon it for the purpose of repairing the wall of his house. The trial Court refused to grant the injunction. The lower appellate Court found that the case fell under s. 24 of the Easements Act, 1882, and that the repair of the wall was an accessory easement to the admitted easement of discharging the water through the eaves. On appeal to the High Court, *Held*, that the right to enter upon the defendant's land to repair the wall which would preclude the defendant from making any use of his land, was not such an easement as the plaintiff was entitled to or was contemplated by s. 24 of the Easements Act, 1882. HIMATLAL MAGANLAL *v.* BHIKABHAI AMRITLAL (1918) . . . . **I. L. R. 42 Bom. 529**

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907).

——— **ss. 2, 3—**

See BROTHEL . **I. L. R. 45 Calc. 301**

EDITOR OF NEWSPAPER.

——— **registration of—**

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

EJECTMENT.

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1.
I. L. R. 42 Bom. 155

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111, CL. (*g*).
I. L. R. 42 Bom. 195

EJECTMENT—*concld.*

———— **suit in—**

See LIMITATION ACT (IX OF 1908), S. 7 AND SCH. I, ART. 44.

I. L. R. 41 Mad. 102

1. ———— *Lease, forfeiture of —Transfer of Property Act (IV of 1882), s. 111, cl. (g)—Breach of covenant—Determination of lease, overt act necessary for—Waiver.* Where the rights and obligations of the parties are regulated by s. 111, cl. (*g*) of the Transfer of Property Act, there is no determination of a lease by forfeiture immediately on breach of covenant, but such breach must be followed by an overt act on the part of the lessor before the tenancy can be deemed to have determined in the eye of the law. *Anandamoyee* v. *Lakhi Chandra Mitra, I. L. R. 33 Calc. 339; 3 C. L. J. 274, Kadir Bakhsh* v. *Prag Narain, 9 All. L. J. 794,* followed. *Held,* further, that the institution of a suit for ejectment cannot be rightly regarded as the requisite act to show the intention of the landlord to determine the lease within the meaning of s. 111, cl. (*g*). The forfeiture must be completed and the lease determined before the commencement of the action for ejectment. *Deo Nandan Pershad* v. *Meghu Mahton, I. L. R. 34 Calc. 57,* referred to. NOWRANG SINGH *v.* JANARDAN KISHOR LAL SINGH (1917).

I. L. R. 45 Calc. 469

2. ———— *Ejectment, suit in—Decree directing payment of compensation—Decree allowed to be barred by limitation—Subsequent suit on title to recover the property, maintainability of.* The plaintiff's father sued the defendant on a lease deed and obtained a decree in ejectment directing payment of compensation under the Malabar Compensation for Tenants' Improvements Act. He allowed the decree to become barred. Plaintiff then sued on his jenm title. *Held,* that the plaintiff was not entitled to maintain another suit to revover the property. *Kutti Ali* v. *Chindan, I. L. R. 23 Mad. 629,* dissented from and *Vedapuratti* v. *Vallabha Vallia Raja, I. L. R. 25 Mad. 300,* approved. MAYAN KUTTI *v.* KUNHAMMAD (1917).

I. L. R. 41 Mad. 641

EJECTMENT SUIT.

———— *Onus of proof—Proof of title.* Where in a suit in ejectment, the plaintiff fails to prove title, but succeeds in proving that he was in possession of the lands in dispute for a brief period within twelve years of suit, the onus of proving title is not thereby shifted to the defendant. BAPUJI NARAYAN *v.* BHAGWANT BALWANT (1918) . . . **I. L. R. 42 Bom. 357**

ELECTION.

———— *Calcutta Municipal Act (Beng. III of 1899), s. 56—Corrupt Practices—Impersonation—Coercion—Intimidation—Free election —Interference by the candidate or his agent.* The election of a candidate as a Municipal Commissioner was challenged under s. 56 of the Calcutta Municipal Act, 1899, on the following grounds, *viz.*:—(i) That five persons were impersonated, four of them being dead and one absent from Calcutta. (ii) That a voter was coerced to vote for the elected candidate. (iii) That certain grogshop owners had been dissuaded by Hem Chandra Lahiry, Inspector of Police, and did not vote through fear. (iv) That the said Inspector of Police interfered with the election, intimidated voters and

ELECTION—*concld.*

freely canvassed for the elected candidate. *Held,* that the election must stand inasmuch as the charges were not substantiated. The Calcutta Municipal Act, 1899, contains no provision regarding corrupt practices in elections. *Mens rea* is an essential ingredient to constitute impersonation. In this case there was nothing to show that the elected candidate or his agent fraudulently and wrongfully caused improper personification and so the charge of impersonation could not stand. In order to avoid an election on the ground of intimidation and undue influence it must be shown either that (i) the rioting or violence was instigated by the candidate or his agents, for whom he is responsible, or that (ii) it prevailed to such an extent as to prevent the election from being an entirely free election. MONORANJAN MUKHERJI *v.* BROJO GOPAL GOSWAMI (1918) . . **22 C. W. N. 678**

ELECTION ROLL.

See MUNICIPAL ELECTION.

I. L. R. 45 Calc. 950

EMBEZZLEMENT.

See PENAL CODE ACT (XLV OF 1860), S. 408 . . **I. L. R. 40 All. 565**

ENCROACHMENT.

———— *Municipal Act, (Bengal III of 1884). s. 217—Encroaching on a public road —Materials sufficient to determine road to be public.* Where the petitioner was convicted under s. 217, Bengal Municipal Act, of encroaching on a public road, upon a finding that the road in question, which was given a name by the Municipality, was made over the petitioner's land to a trenching ground and so used for some time and was subsequently given up with the closing of the trenching ground. *Held,* that this alone was not sufficient for the conclusion that the road was a public one. NANDO LAL NEOGY *v.* GORALIA MUNICIPALITY (1910) . . . **22 C. W. N. 599**

ENEMY VESSEL.

See SALE OF GOODS.

I. L. R. 45 Calc. 28

ENHANCEMENT OF RENT.

See MADRAS RENT RECOVERY ACT, 1865, S. 11 . . . **I. L. R. 45 I. A. 195**

———— **ground for—**

See LANDLORD AND TENANT.

I. L. R. 45 Calc. 930

———— **suit for**—*Tenant shown to have asserted right to hold at unalterable rent more than 12 years before suit—Title by adverse possession, if arises.* Where the rent of a tenancy is enhancible, an assertion by the tenant that his rent cannot be enhanced not followed within 12 years by a suit for enhancement does not confer on the tenant a right to hold the land at a permanent rent. BIRENDRA KISHORE MANIKYA *v.* DOULAT KHAN (1917).

22 C. W. N. 856

EQUITY OF REDEMPTION.

———— **assignment of, to sureties—**

See MORTGAGE. **I. L. R. 45 Calc. 702**

ESTATES LAND ACT (MAD. I OF 1908).

———— **s. 3** (*2*) (*d*)—*Grant in inam of an agraharam by an ancient king—Presumption as to*

ESTATES LAND ACT (MAD. I OF 1908)—*contd.*

——— **s. 3** (*2*) (*d*)—*concld.*

rights conveyed—Agraharam granted, whether an 'estate'—Right of agraharamdar to sue in ejectment in Civil Court. There is no presumption in law that the grant of an inam by a Native ruler prior to British rule conveyed only the melvaram (revenue due to the State). *Held*, accordingly, that a grant of an agraharam in inam made by a Reddi king of Nellore more than 400 years ago and validated under s. 15 of Madras Regulation XXXI of 1802 conveyed both the melvaram and kudivaram rights. *Held*, further, that the agraharam was not an 'estate' within s. 3 (*2*) (*d*) of the Madras Estates Land Act and the agraharamdar was entitled to sue the tenants in ejectment in a Civil Court. SURYANARAYANA *v.* PATANNA (1918) . . . . **I. L. R. 41 Mad. 1012**

——— **ss. 3** (*2*) (*d*) **and 8**—*One of several inamdars, acquiring the entire kudivaram right in an inam village—Lease of lands by such inamdar—Suit for rent in Civil Court—Jurisdiction of Civil or Revenue Court—Exception to s. 8, applicability of, to cl. 1 or 2 of. s. 8—Strict construction, necessity for* Where one of several *inamdars* in an *inam* village, having acquired by gift the *kudivaram* right in the whole village and leased fifty cents of land out of the whole village, sued to recover rent in a Civil Court on the basis of the lease; *held*, that the Civil Court had no jurisdiction to entertain the suit, and that the plaint should be returned for presentation to a Revenue Court having jurisdiction. The expression 'the *inamdar*' in the exception to s. 8 of the Estates Land Act should be read in its strict sense as equivalent only to the owner of the entire interest in the *inam*, and the exception should be treated as governing only sub-s. (*1*) and not sub-s. (*2*) of s. 8 of the Act. RAJACHARI *v.* TIRUMUGOOR DEVASTANAM (1918). **I. L. R. 41 Mad. 724**

——— **s. 26**—*Suit in a Revenue Court—Contract between previous landholder and tenant as to rate of rent—Rate, lower than the lawful rate, whether binding on successor—Validity of contract—Jurisdiction of Revenue Court to decide.* A Revenue Court exercising jurisdiction under the Madras Estates Land Act is competent to decide all incidental questions the determination of which is necessary for the disposal of the main question arising in the case; and in a suit filed to contest the right to sell a holding for arrears of rent under the Act the Revenue Court can decide on the validity of a contract between the landholder's predecessor in title and the tenant as to the rate of rent, although the objection to its validity is based on grounds other than those specified in s. 26 of the Act. *Raja of Pittapore* v. *Sreerama Charyulu*, (1911) *Mad. W. N. 30*, explained. SETHURAMA AYYANGAR *v.* SUPPIAH PILLAI (1917). **I. L. R. 41 Mad. 121.**

——— **s. 40, cl.** (*3*)—'*Years*' *in, meaning of—Swami-bhogam, whether rent or cess within s. 3, cl (11)—Agreement between landlord and tenant for a consolidated grain rent, enforceability of.* In s. 40, cl. (*3*) (*a*) of the Madras Estates Land Act, 'preceding ten years' means the ten years preceding the year in which the Collector determines the amount of the commuted rent and not the ten years preceding the year in which the suit is instituted; and 'year' means the year of the lease, that is, the year for which the landlord is entitled either by custom or contract to claim rent, and not the *fasli* or the calendar year. *Swami-bhogam* is 'rent' within s. 3, cl. (*11*) and is not a cess. Where a fixed grain *pattam* (rent) has been agreed to, the arrangement is binding on both the parties and it is not open to the tenant to reopen the same on the ground that certain illegal cesses were included therein. When the Revenue Court refuses commutation, an appeal lies under Sch. A, cl. 4 of the Act only to the District Collector and not to the District Court; and hence no second appeal lies to the High Court from such order of refusal. *Jeeatoollah Paramanick* v. *Jugodindro Narain Roy, 22 W. R. 12*, followed. SIVANUPANDIA THEVAR *v.* ZAMINDAR OF URKAD (1917). **I. L. R. 41 Mad. 109.**

ESTATES LAND ACT (MAD I OF 1908)—*concld.*

——— **s. 40, cl.** (*3*) *concld*

——— **s. 192, cl.** (*a*)—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLIII, AND S. 115. **I. L. R. 41 Mad. 554**

ESTOPPEL.

See CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. ACT IV OF 1898), S. 48 (*11*) . . **I. L. R. 42 Bom. 54**

See CIVIL PROCEDURE CODE, S. 60(*c*); O. XXI, R. 92. **I. L. R. 40 All. 680**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 5 (*3*). **I. L. R. 41 Mad. 327**

See COMPANY . **I. L. R. 42 Bom. 215**

See HINDU LAW—ADOPTION. **I. L. R. 40 All. 593**

See HINDU LAW—REVERSIONERS. **I. L. R. 40 All. 487**

See LEASE . **I. L. R. 42 Bom. 103**

See MORTGAGE . . **22 C. W. N. 641**

See SALE OF GOODS. **I. L. R. 42 Bom. 16**

——— *Mortgage—Registration—Property not in existence, inclusion of—Indian Evidence Act (I of 1872), s. 115—Estoppel, if could be invoked to defeat the provisions of the Registration Act—Fraud on the Registration Law—Onus to prove the existence of property mentioned in mortgage deed.* The predecessors of defendants-respondents executed a mortgage in favour of the plaintiffs-appellants on 15th April 1902. The mortgaged properties included a plot of rent-free land in the District of Burdwan about 1 bigha in area, and butted and bounded as described in the mortgage-deed. The said deed of mortgage was registered at Burdwan. One of the defendants contended that the mortgagors never possessed the said plot of land nor did such a plot of land ever exist, that it was a fictitious plot mentioned in the said deed of mortgage in fraud of the law of registration and that the registration was thus invalid and so the plaintiffs could not get any relief in respect of the same. *Held*, that the onus lay on the defendants to disprove the existence of the plot of land in 1902. *Held*, further, that the defendants failed to discharge the onus and therefore the suit should be decreed with costs. There can be no doubt about the general rule that the principle of estoppel

ESTOPPEL—*concld.*

cannot be invoked to defeat the plain provisions of a statute. *Quœre* : Whether the plaintiffs in the present case were invoking an estoppel to defeat the provisions of the Registration Act. SUDHIR CHANDRA SET *v.* SYED ABDULLA-UL-MUSAVI (1917). **22 C. W. N. 894**

EVIDENCE.

See CRIMINAL PROCEDURE CODE, SS. 110 (*f*), 117 . . **I. L. R. 40 All. 372**

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 36. **I. L. R. 40 All. 153**

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 45 Calc. 878**

See WAJIB-UL-ARZ. **I. L. R. 45 Calc. 793**

——— admissibility of—

See EVIDENCE ACT (I OF 1872), S. 68. **I. L. R. 40 All. 256** **I. L. R. 45 Calc. 320**

——— character of—

See REVIEW. . **I. L. R. 45 Calc. 60**

1. ——— *Document not in List—Horoscope—Use to refresh memory—O. VII, r. 14—Joint family property—Alienation—Conditional decree setting aside—Mesne profits.* Upon an issue as to the date of a person's birth a witness, for the purpose of refreshing his memory, can refer to a horoscope made by him at the time, although the document has not been included in the list of documents, under O. VII, r. 14. When, in a suit by a Hindu to set aside a sale of joint family property made by his father, it is found that part of the purchase-money was applied to pay antecedent debts, and the sale is set aside conditionally upon the payment of the sum so applied, mesne profits are not recoverable from the alienee. BANWARI LAL *v.* MAHESH (1918). . **L. R. 45 I. A. 284**

2. ——— *Evidence Act (I of 1872), s. 92—Evidence of acts and conduct of parties to deeds showing that they were mortgages when in form they were absolute transfers—Fraudulent dealing with property which the parties knew belonged to a third person not a party to deeds.* The language of s. 92 of the Evidence Act, 1872, with regard to a "contract, grant or disposition reduced to writing," in terms applies, and applies alone; "as between the parties to any such instrument, or their representatives in interest." Wherever, accordingly, evidence is tendered as to a transaction with a third party, it is not governed by the section or by the rule of evidence which it contains, and in such a case, therefore, the ordinary rules of equity and good conscience come into play unhampered by the statutory restrictions. The principle of equity, which are universal, forbid a person to deal with property which he knows he holds on security, and not in actual ownership. In this case both the grantor and grantee in transactions by deed regarding certain land were shown by the evidence to have dealt with it with the knowledge that it belonged to a third person who was not a "party to the deeds or a representative in interest of a party" to them. It was alleged that the deeds, though in form absolute transfers of the property, were intended to be only mortgages or transfers of mortgages. *Held*, that s. 92 of the Evidence Act was no bar to the admission of evidence to show what was the true nature of the transactions; it did not prevent fraudulent dealing with a third person's property. Evidence as to that third party's rights is admissible, and, if admissible, is most relevant. The series of cases cited in the judgment, of which *Baksu Lakshman* v. *Govinda Kanji, I. L. R. 4 Bom. 594*, is an example, in which it has been decided that, notwithstanding the terms of s. 92, evidence is admissible to show the acts and conduct of the parties to such deeds as inconsistent with the absolute transfer of the property, and only consistent with the true nature of the transaction having been one of mortgage or transfer of mortgage, ceased to have any binding authority after the decision by the Board in *Balkishen Das* v. *Legge, I. L. R. 22 All. 149*; *L. R. 27 I. A. 58*, in which it was held that oral evidence was not admissible for the purpose of ascertaining the intention of parties to written documents; and that the cases in the English Court of Chancery had no application to the law of India as laid down in the Acts of the Indian Legislature. *Achutaramaraju* v. *Subbaraju, I. L. R. 25 Mad. 7, Maung Bin* v. *Ma Hlaing, 3 L. B. Rul. 100*, and *Dattoo valad Totaram* v. *Ram Chandra Totaram, I. L. R. 30 Bom. 119*, referred to, as being cases in which the judgment of the Board in *Balkishen Das* v. *Legge, I. L. R. 22 All. 149, L. R. 27 I. A. 58*, had been rightly followed and applied. MAUNG KYIN *v.* MA SHWE LA (1917) . **I. L. R. 45 Calc. 320**

3. ——— *Evidence—Probability, considerations of, if and when may outweigh positive evidence, when some found untrustworthy—Admission in deed to be taken as primâ facie true.* Where some of the verbal evidence was untrustworthy whilst the documents recorded a state of affairs which was often hard to reconcile with probabilities. *Held*, that unless the facts evidenced by documentary and oral testimony were so much at variance with known conditions as to be incapable of reasonable explanation, it was to those facts, and those facts alone, that the Court must trust to reach a safe conclusion upon the matter in controversy. A statement in a document should *primâ facie* be accepted as true as against the executant unless it can be shown by independent evidence to be false. IRSHAD ALI *v.* KARIMAN (1917) . . . . . **22 C. W. N. 530**

4. ——— *Statement in wajib-ul-arz—Suit to recover 'parjot.'* Plaintiff sued as owner of the *abadi* of a village to recover a certain number of maunds of cotton seed from the defendants who were banias having shops in the said *abadi*, and claim was based mainly upon an entry in a wajib-ul-arz framed some fifty years before suit, to the effect that tenants living in the village did not pay "*kiraya*" (rent of a house) but '*parjot*' (ground-rent), which, for banias, was one maund of cotton seed a year for each shop. *Held*, that the entry in the wajib-ul-arz was reliable evidence of the liability of the defendants to pay '*parjot*' to the zemindar in the manner described, and that the use of the word indicated that the origin of the payment was an agreement between the inhabitants of the *abadi* and the zemindar rather than a custom. MUHAMMAD FAIYAZ ALI KHAN *v.* BIHARI (1917) **I. L. R. 40 All. 56**

EVIDENCE ACT (I OF 1872).

——— s. 3—

See SANCTION FOR PROSECUTION. **I. L. R. 45 Calc. 585**

EVIDENCE ACT (I OF 1872)—*contd.*

——— **ss. 3, 74** (*2*)—

See CONTEMPT OF COURT.

I. L. R. 45 Calc. 169

——— **s. 13**—*Suit for rent by co-sharer landlord—Decree for rent obtained by another co-sharer, admissibility of, to prove holding and rent.* The plaintiff, a co-sharer landlord, sued the defendant for his share of rent in respect of a certain holding. He produced a decree for rent previously obtained by another co-sharer landlord against the defendant for his share of rent in respect of the same holding. *Held*, that whether the decree was by a predecessor of the plaintiff or by a stranger, it was admissible under s. 13 of the Evidence Act for the purpose of showing that the defendant held the holding at the particular rent. BYOMKESH CHAKRAVARTI *v.* JAGADISWAR RAI (1917).

22 C. W. N. 304

——— **ss. 14, 15**—*Relevancy of facts showing ill-will and facts forming part of similar occurrences—Indian Penal Code (Act XLV of 1860), s. 211—Making false claim in suit.* The appellant was convicted under s. 209, Indian Penal Code, of having made false claims in three suits brought against certain persons. Two other persons besides the appellant were similarly prosecuted and convicted for bringing other false suits against the same defendants. *Held*, that evidence relating to suits brought by the appellant other than those specified in the charges was properly admitted under ss. 14 and 15 of the Evidence Act for the purpose of showing the ill-will or enmity of the appellant towards the defendants in those suits as a body, but the evidence relating to suits brought by other persons, when no case of a conspiracy between them and the appellant was alleged or established, was inadmissible. RAGHUNATH LAL *v.* KING-EMPEROR (1918) . **22 C. W. N. 494**

——— **ss. 24, 27, 30**—

See MISDIRECTION.

I. L. R. 45 Calc. 557

——— **ss. 24, 123, 124**—*Privilege claimed by witness—Confession—Opium Act (I of 1878), s. 9—Illicit possession of opium.* The appellant was prosecuted by the Excise authorities and convicted of being in possession of opium without a license. It was stated that the appellant made a confession to the Superintendent of Excise. At the trial the defence called the Inspector of the Customs Preventive Service and asked him to corroborate his statements from the posting register to show that the Preventive Officers were stationed at a particular place at the time of the appellant's arrest. The defence also examined the Superintendent of the Preventive Service and asked him whether an Excise Inspector made an admission to him in the presence of the Excise Superintendent. *Held*, that the question of privilege could not arise in respect of the posting register, the entry in question being merely a note of the times when particular Preventive Officers were ordered to be at their stations. That the Customs Superintendent could not claim privilege as to the admission made to him by the Inspector although what took place between the two Superintendents might probably be privileged. That in the absence of any inducement, threat or promise the confession to the Superintendent of Excise was not shut out under s. 24 of the Evidence Act. RUKUMALI *v* EMPEROR (1917) . **22 C. W. N. 451**

EVIDENCE ACT (I OF 1872)—*contd.*

——— **ss. 25, 30**—*Confessional statements to Excise Officers—Self-exculpatory statements, use of—Criminal Procedure Code (Act V of 1898), s. 342—Opium Act (I of 1878), s. 9, cls.* (c), (d)—*Illicit possession of opium.* The appellant with two other persons was prosecuted under the Opium Act. The co-accused made some statements to Excise Officers which the Magistrate used against the appellant. *Held*, that the statements could not be rejected under s. 25 of the Evidence Act, for it could not be said that the Excise Officers were Police Officers. That in order to determine whether the statements were confessions the whole of the statements must be taken into consideration and the statements in question being self-exculpatory were inadmissible against the appellant. That the Magistrate should have examined the accused as provided in s. 342, Criminal Procedure Code. The High Court acquitted the accused on the ground that although the facts proved might give rise to suspicion against the appellant, he was entitled to the benefit of the doubt. AH FOONG CHINAMAN *v.* KING-EMPEROR (1918).

22 C. W. N. 834

——— **s. 26**—*Confession—Custody of Police—Confession made to doctor in dispensary while policemen are waiting outside, is bad.* The accused, an undertrial prisoner, was sent up by the Magistrate in whose lock-up he was, in the custody of two policemen, to a hospital for treatment. The policemen made him over to the doctor and waited in the verandah to take him back. While with the doctor in his room, the accused made a confession of his guilt. At the trial, the confession was allowed to be proved. A question having arisen whether the confession was properly let in. *Held*, that the confession was excluded by s. 26 of the Indian Evidence Act (I of 1872), because the accused who was in police custody up to his arrival at the hospital remained in that custody while the policemen were standing outside on the verandah. *Queen-Empress* v. *Lakshmya bin Bhima*, (*1896*) *Ratanlal's Cri. Cas. 855*, followed. EMPEROR *v.* MALLANGOWDA (1917).

I. L. R. 42 Bom. 1

——— **s. 35**—

1. ——— *Register of births and deaths kept by village officials—Extract from the register, whether receivable in evidence and whether evidence of the date of death of a person.* A register of births and deaths kept by village officials under the orders of the Board of Revenue is a public document within the meaning of s. 35 of the Evidence Act and an entry in such register recording the death of a person is evidence of the actual date of his death. *Ratcliff* v. *Ratcliff and Anderson, 1 Sw. & Tr. 467*, and *In the Estate of Goodrich : Payne* v. *Bennet*, [*1904*] *P. D. 138*, referred to. RAMALINGA REDDI v. KOTAYYA (1917).

I. L. R. 41 Mad. 26

2. ——— *Register of births and deaths kept at Police stations if a public document.* A Register of births and deaths kept at the police station is a public document within the meaning of s. 35 of the Evidence Act and a certified copy of an extract therefrom is admissible in evidence. TAMIJUDDIN SARKAR *v.* SHEIKH TAZU (1918) . . . . . **22 C. W. N. 822**

3. ——— *Register of Minhaidari villages, admissibility of.* On the question of the admissibility in evidence of the contents of

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 35—*concld.*

a register of Minhaidari villages, *Held*, that the register being clearly an official document, in the absence of anything to show that any particular part of it was in excess of the official duty by reason of which it came into existence, and that in consequence that part might not be admissible, was admissible in evidence under s. 35 of the Indian Evidence Act. DIRGAJ DEO BAHADUR *v.* BENI MAHTO (1917) . . **22 C. W. N. 439**

——— s. 58—*Fact admitted need not be proved —Defendant's admission of signature to a bond— Proof of the bond—Inference from facts which are not evidence—Inference not according to law—Error of law—Interference by High Court on second appeal.* The plaintiff having sued on a mortgage, the sons, of the mortgagor, some of whom were minors, denied all knowledge of the mortgage. One of the sons (defendants) who had attained majority, when examined as a witness, admitted that the signature to the mortgage-deed was his father's. At an adjourned date of hearing, the plaintiff was absent on account of illness and his witnesses also were not present. The Court declined to grant any further adjournment, and dismissed the suit holding that the mortgage-deed was not proved. The Court also inferred from the mere fact that the plaintiff delayed bringing his suit until almost the last day allowed him by the law of limitation that he must have been receiving interest all that time at the rate stipulated for in the deed, and on that calculation it reached the conclusion that the debt had been fully satisfied. The plaintiff having appealed: *Held*, that as far as the defendant who had admitted the signature was concerned, his admission would, under s. 58 of the Indian Evidence Act, 1872, relieve the plaintiff of any further responsibility of proving the document. *Held*, further, that the inference in question was one not drawn from any evidence, and the drawing of it was an error of law, which could be rectified in second appeal. LAKHICHAND CHATRABHUJ *v.* LALCHAND GANPAT (1918).

I. L. R. 42 Bom. 352

——— s. 68—

1. ——— *Admissibility of document in evidence—Mortgage-deed not proved, but terms thereof incorporated in a subsequent instrument properly executed and proved.* Where a document, itself legally inadmissible in evidence, was subsequently referred to and partly incorporated in a second document of similar import duly executed between the same parties and registered according to law, it was *held* that the earlier document might be referred to for the purpose of explaining and amplifying the terms of the second, and of arriving at a correct conclusion as to the true nature of the transaction into which the parties had entered. *Fishmongers' Company* v. *Dimsdale, 18 L. J., C. P. 65; 6 C. B. 899*, and *Mitchell* v. *Mathura Das, I. L. R. 8 All. 6*, referred to. MOTI CHAND *v.* LALTA PRASAD (1917).

I. L. R. 40 All. 256

2. ——— *Attesting witness, meaning of—Writer of a document, whether can be regarded as an attesting witness.* The writer of a document who signed the same as a scribe, can be regarded as an attesting witness, if he saw the signing of the document by the executant. *Veerappudayan* v. *Muthukaruppan Thevan, 24 Mad. L. J. 534, Ayyasami Iyengar* v. *Kylasam Pillai, 26 I. C. 409*, and *Ranu* v. *Laxman Rao, I. L. R. 33 Bom 44*, referred to. *Badri Prasad* v. *Abdul Karim, I. L. R. 35 All. 254*, and *Ram Bahadur Singh* v. *Ajodhya Singh, 20 C. W. N. 699*, dissented from. PARAMASIVA UDAYAN *v.* KRISHNA PADAYACHI (1917) . . . **I. L. R. 41 Mad. 535**

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 68—*concld.*

——— ss. 68, 70—*Admission of execution by person claiming through executant.* Admission of execution of an attested document by the executant or by a person representing his interests is sufficient proof of its execution against the person making such admission. As against other parties the document must be proved in accordance with s. 68, Evidence Act. NIBARAN CHANDRA SEN *v.* RAM CHANDRA SEN (1917) . **22 C. W. N. 444**

——— ss. 80, 91—

See DEPOSITION . **I. L. R. 45 Calc. 825**

——— s. 91—

See CONTRACT FOR SALE.

I. L. R. 45 Calc. 481

——— s. 92—

See EVIDENCE, ADMISSIBILITY OF.

I. L. R. 45 Calc. 320

——— *Written document—Oral evidence to vary its terms—Plea of fraud—Section applies only to parties or their representatives.* In 1892, certain property was purported to be sold to *S* by its owners, the plaintiff and his cousin. In 1898, *S* sold a moiety of the property to defendant No. 1, who was plaintiff's sister's son; and he sold the other moiety to the same person in 1904. The plaintiff sued in 1913 for a declaration that the transaction of 1892 was a mortgage. The trial Court came to the conclusion that the original transaction with *S* was a mortgage and that in 1898 and 1904 the property was conveyed by *S* to defendant No. 1 with full knowledge of the fact that *S* was only a mortgagee and with the understanding that defendant No. 1 was to hold the property subject to the liability to reconvey the same to the plaintiff and his cousin on payment. The trial Court held the plaintiff entitled to redeem a moiety of the property. On appeal, the lower appellate Court came to the same conclusion on facts; but dismissed the plaintiff's claim on the ground that the evidence to show that the conveyance of 1898 was a mortgage was inadmissible. The plaintiff having appealed: *Held*, that so far as the transactions of 1898 and 1904 were concerned, s. 92 of the Indian Evidence Act (I of 1872) had no application, for the plaintiff was not a party to either of them. *Held*, by SHAH *J.*, that as regards the transaction of 1892, the oral evidence was admissible under proviso 1 to s. 92, the plaintiff's allegation in substance being one of fraud, namely, that though defendant No. 1 entered into these transactions with the full knowledge of the fact that *S* was really a mortgagee and not the owner of the property, he later turned round and said that he had no such knowledge. *Held*, by MARTEN *J.*, that assuming the transaction of 1892 must be taken to be a sale, there was nothing in s. 92 to prevent oral evidence of a subsequent agreement in 1898, to treat the 1892 deed as a mortgage, and to enter into the 1898 deed as a transfer of that mortgage. *Held*, therefore, that the plaintiff was entitled to recover the property comprised in the 1898 transaction on payment of the moneys there paid by defendant to *S* and

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 92**—*concld.*

subsequent interest. GANU *walad* RAMJI *v.* BHAU *walad* BAPUJI (1918) . **I. L. R. 42 Bom. 512**

——— **s. 105**—*Penal Code (Act XLV of 1860), s. 97—Right of private defence—Pleadings—Alternative and apparently inconsistent pleas.* The right of an accused person to defend himself upon a criminal charge can only be limited by the provisions of the statute law. There is nothing in the law to prevent a man on his trial on a charge of culpable homicide from setting up an alternative defence on some such lines as these: "*First*, I was not present at the occurrence referred to by the prosecution witnesses, and they are giving false evidence against me; *secondly*, even if I fail to persuade the Court of this fact, I can show, from the statements of the prosecution witnesses themselves, that, if I had caused the death of any person in the manner and under the precise circumstances deposed to by their evidence, I should have been acting in the lawful exercise of a right of private defence. *Queen-Empress* v. *Prag Dat, I. L. R. 20 All. 459, Queen-Empress* v. *Timmal, I. L. R. 21 All. 122,* and *Emperor* v. *Gullu, All. Weekly Notes, 1904, p. 113,* referred to. EMPEROR *v.* YUSUF HUSAIN (1918) . **I. L. R. 40 All. 284**

——— **s. 115**—*Estoppel—Owner causing person without legal title to have her name registered as proprietor in Revenue Register—Conveyance sued on challenged as invalid on account of vendor's minority—Failure to prove minority—Onus—Co-defendants, res judicata as between.* Property belonging to *B's* estate, then under management under the provisions of the Chota Nagpur Encumbered Estates Act, having been put up to sale by the manager, was bought by *K* who either was a *benamidar* for *B* or whose title was extinguished by reason of his not taking a conveyance of it. *B* then caused *K's* son to execute a conveyance of the property to *B's* natural daughter *R* and later on actively assisted her in a proceeding for mutation of names in the Revenue Register for which *R* applied. Her name was registered and she thus became bound for all the State liabilities which attach to registered holders of immoveable property. On *B's* death, his widow *C* sued for a declaration that the property was hers, making *R* and *J*, *B's* son and heir, defendants. That suit was dismissed, the Court holding as between *R* and *J* that the property was *R's*. The plaintiff claiming under a conveyance executed in his favour by *R* sued for recovery of the property from *J* who *inter alia* pleaded that *R* was an infant at the date of the conveyance which in consequence was invalid. *Held*, that the onus to prove minority being on defendant, defect in his proof could not be cured by a mere criticism of the plaintiff's evidence, and the defendant having failed to bring reliable evidence to prove his assertion, the conveyance must stand. That the decision in *C's* suit as between *R* and *B* who were co-defendants was not *res judicata* in the present suit. That *B* was estopped from questioning *R's* title to the property. JAGANNATH PRASHAD SINGH *v.* SYED ABDULLAH (1918) . . . . . **22 C. W. N. 891**

——— **ss. 118, 132**—

See WITNESS . . **I. L. R. 45 Calc. 720**

——— **s. 132**—*Penal Code (Act XLV of 1860), s. 499—Witness—How far a statement made by a witness in giving evidence is privileged.* A person who whilst giving evidence as a witness in Court has made a statement which *prima facie* amounts to defamation under s. 499 of the Indian Penal Code may plead one or other of the exceptions to that section, or he may claim the protection of the proviso to s. 132 of the Indian Evidence Act, 1872; but in the latter case he must show that he was *compelled* to make the statement alleged to be defamatory in the sense that he had asked to be excused from answering the question which led up to it and the Court had obliged him to answering it. *Queen* v. *Gopal Doss, I. L. R. 3 Mad. 271, Queen Empress* v. *Moss, I. L. R. 16 All. 88,* and *Emperor* v. *Ganga Prasad, I. L. R. 29 All. 685,* referred to. KALLU *v.* SITAL (1918).

I. L. R. 40 All. 271

EVIDENCE ACT (I OF 1872)—*concld.*

——— **s. 132**—*concld.*

——— **s. 165**—*Suit under Registration Act (XVI of 1908), s. 77—Suit to enforce registration of a will—Evidence taken before Sub-Registrar, filed in Court by the consent of parties—Evidence, not found to be relevant under s. 33 of the Act or otherwise—Judgment and decree, based on such evidence, whether valid.* A suit, instituted under s. 77 of the Registration Act to enforce registration of a will, was decided by the Court on evidence taken before the Sub-Registrar and filed as evidence in the suit by consent of the parties who did not want to adduce any further evidence in the Court. The Court did not find that the evidence was relevant under s. 33 or any other section of the Evidence Act but admitted the same solely on the ground of the consent of the parties. On objection being taken in appeal to the validity of the judgment. *Held*, that the judgment was invalid under s. 165 of the Evidence Act, as it was not based on facts declared to be relevant by the Act and duly proved, that the consent of parties could not take the place of a declaration of the Evidence Act, and that consequently the judgment and the decree should be set aside. *Sri Raja Prakasaravanim Garu* v. *Venkata Rao, I. L. R. 38 Mad. 160,* dissented from. PONNUSWAMI PILLAY *v.* SINGARAM PILLAY (1918).

I. L. R. 41 Mad. 731

EX PARTE DECREE.

——— *Collusion—Land purchased in execution—Suit for possession—Utilisation of Courts for creation of fictitious titles, whether permissible—Benamidar's right to sue.* Where *A* sued his widowed sister *B* collusively for money alleged to have been advanced to her husband, and obtained an *ex parte* decree, and in execution thereof purchased *B's* property also collusively at a sale held by the Court, and thereafter instituted a suit for recovery of possession on establishement of title: *Held*, that Courts of Justice should not be permitted to be utilised for the purpose of creating fictitious titles, which must inevitably tend to weaken the sanctity which justly attaches to judicial transactions. It was open to a party to impeach the reality of a transaction between two private individuals and equally open to him to impeach the reality of a judicial proceeding. *Held*, also, that in suits for land an action could not be maintained by a *benamidar. Bandon* v. *Becher, 3 Cl. & Fin. 479, Atrabannessa Bibi* v. *Safatullah Mia, 22 C. L. J. 259,* followed. *Rambehari Sarkar* v. *Surendra Nath Ghose, 19 C. L. J. 34, Hari Gobind Adhikari* v. *Akhoy Kumar Mozumdar, I. L. R. 16 Calc. 364, Mohendra Nath Mookerjee,* v. *Kali Proshad Johuri, I. L. R. 30 Calc. 265,* referred to. *Ram*

EX PARTE DECREE—*concld.*

Bhurosee Singh v. *Bissesser Narain Mahata, 18 W. R. 454,* dissented from. SURENDRA NATH GHOSE *v.* KALI GOPAL MOZUMDAR (1917).
I. L. R. 45 Calc. 920

EX-PROPRIETARY RIGHTS.

See AGRA TENANCY ACT (II OF 1901), SS. 10, 20 . **I. L. R. 40 All. 449**

EXAMINATION ON COMMISSION.

1. ——————— *Purdanashin lady —Exemption—Code of Civil Procedure (Act V of 1908), ss. 132, 133—Costs.* S. 132 of the Code of Civil Procedure covers the case of a woman, who, although she may have abandoned the protection of the *purda,* should not be compelled to give evidence in Court, having regard to the class and community to which she belongs. SOLOMAN *v.* JYOTSNA GHOSAL (1917) . **I. L. R. 45 Calc. 492**

2. ——————— *Purdanashin lady —Practice—Right of purdanashin lady to be examined on commission—Civil Procedure Code (Act V of 1908), s. 132, cl. (1).* The petitioner, a *purdanashin* lady, applied under s. 132, cl. (*1*) of the Civil Procedure Code, to be examined on commission. The opposite party objected on the ground that she had on a former occasion appeared before a Criminal Court to institute a complaint. *Held,* that she was entitled to be examined on commission and ought not to be compelled to appear in public. *Chamatkar Mohiney Dabee* v. *Mahesh Chunder Bose, I. L. R. 26 Calc. 651 n . Mahesh Chunder Addy* v. *Manick Lall Addy, I. L. R. 26 Calc. 650,* followed. *In re Hurro Soondery Chowdhrain, I. L. R. 4 Calc. 20, In re Din Tarini Debi, I. L. R. 15 Calc. 775, Abhaycswari Debi* v. *Kishori Mohan Banerjee, I. L. R. 42 Calc. 19 ; 18 C. W. N. 1020. Hem Coomaree Dassee* v. *Queen Empress, I. L. R. 24 Calc. 551, In re Faridunnissa, 1. L. R. 5 All. 92, In re Basant Bibi, I L. R. 12 All. 69,* discussed. BALAKESHWARI DEBI *v.* JNANANANDA BANERJEE (1917) . . . . **I. L. R. 45 Calc. 697**

EXCHANGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 54, 118.
I. L. R. 40 All. 187

EXCISABLE ARTICLE.

——————— *Bonâ fide medicinal preparation containing alcohol—Unlicensed manufacture and sale of such—Excise Act (Beng. V of 1909,) ss. 2 (7), (14), & 46 (c), as amended by Beng. Act VII of 1914.* A medicinal preparation containing alcohol (ranging from 68·3 % to 87% proof) is an "excisable article" within the meaning of the Bengal Excise Act (V of 1909), s. 2 (7) (*14*), as amended by Beng. Act VII of 1914. *Gonesh Chunder Sikdar* v. *Queen Empress, I. L. R. 24 Calc. 157, Mati Lal Chandra,* v. *Emperor, I. L. R. 39 Calc. 1053, Satish Chandra Roy* v. *King-Emperor, 17 C. W. N. 939,* declared obsolete. GANESH CHANDRA SIKDAR *v.* EMPEROR (1917).
I. L. R. 45 Calc. 82

EXCISE ACT (BENG. V OF 1909).

——————— SS. 2 (7), (*14*), 46 (*a*)—

AS AMENDED BY BENG. ACT VII OF 1914 : *See* EXCISABLE ARTICLE.
I. L. R. 45 Calc. 82

EXCISE LICENCE.

See UNITED PROVINCES EXCISE ACT (IV OF 1910), S. 64 (*c*) . **I. L. R. 40 All. 563**

EXCLUSION.

See HINDU LAW—INHERITANCE.
I. L. R. 45 Calc. 17

EXECUTION.

See EXECUTION SALE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2 (*11*), 53.
I. L. R. 42 Bom. 504

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47.
I. L. R. 42 Bom. 246

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, RR. 73 AND 83.
I. L. R. 41 Mad. 616

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 48.
I. L. R. 42 Bom. 367

See LIMITATION ACT (IX OF 1908), SCH I. ARTS. 181, 182
I. L. R. 42 Bom. 309

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CLS. (5) AND (6).
I. L. R. 42 Bom. 420

See MORTGAGE . **I. L. R. 41 Mad. 513**

——————— *Transfer to Collector—Mortgage by judgment-debtor—Invalidity—Civil Procedure Code (Act XIV of 1882), s. 325A.* When the execution of a decree ordering the sale of immovable property has been transferred to the Collector under s. 320 of the Code of Civil Procedure, 1882, the effect of s. 325A is that a mortgage of the property, or any part of it, made by the judgment-debtor while the Collector can exercise the powers given to him by ss. 322 to 325 is absolutely void, and not merely void as against the Collector and those claiming under him. *Magniram Vithuram* v. *Bakubai, I. L. R. 36 Bom. 510,* disapproved. *Salu Bai* v. *Bajat Khan, 13 Nagpur L. R. 130,* approved. GAURISHANKAR BALMUKUND *v.* CHINNUMAYA (1918) . . . **L. R. 45 I. A. 219**

EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE (1882), S. 315.
I. L. R. 40 All. 411.

See CIVIL PROCEDURE CODE (1908), S. 47 ; O. XLI R. 1 . **I. L. R. 40 All. 12**

See CIVIL PROCEDURE CODE (1908), S. 48.
I. L. R. 40 All. 198

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 54 . **I. L. R. 42 Bom. 689**

See CIVIL PROCEDURE CODE, S. 60 (*c*); O. XXI R. 92 . **I. L. R. 40 All. 680**

See CIVIL PROCEDURE CODE (1908) S. 104, O. XXI, RR. 90 AND 92; O. XLIII, R. 1 (*j*).
I. L. R. 40 All. 122

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 7 . **I. L. R. 40 All. 423**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 32 . **I. L. R. 40 All. 648**

EXECUTION OF DECREE—*concld.*

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 58 . **I. L. R. 40 All. 325**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 . **I. L. R. 40 All. 505**

See CIVIL PROCEDURE CODE (1908), O. XXI, RR. 89, 92. **I. L. R. 40 All. 425**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 95 . **I. L. R. 40 All. 216**

See CIVIL PROCEDURE CODE (1908), O. XXIV, RR. 1, 2 AND 3. **I. L. R. 40 All. 125**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, EXPL. I. **I. L. R. 40 All. 206**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (*5*). **I. L. R. 40 All. 209**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (*5*) . **I. L. R. 40 All. 668**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (*6*). **I. L. R. 42 Bom. 553**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (*6*), S. 7 **I. L. R. 40 All. 630**

1. ——————— *Limitation—Decree giving mesne profits to be ascertained in the execution department—Terminus a quo.* The decree in a suit for redemption of a usufructuary mortgage provided that certain mesne profits were payable to the mortgagor, the mortgage having been more than satisfied by the profits of the property. The amount of mesne profits was to be ascertained in the execution of department. *Held*, that as regards execution of the decree in respect of such mesne profits time did not begin to run against the mortgagor until the profits had in fact been ascertained. *Muhammad Umarjan Khan* v. *Zinat Begam, I. L. R. 25 All. 385*, followed. NARSINGH DAS *v.* DEBI PRASAD (1918). **I. L. R. 40 All. 211**

2. ——————— *Mortgage bond—Money-decree—Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 14, 15—Declaration of lien over properties—Such properties cannot be sold in execution—Decree-holder's remedy.* Where a decree is a decree against the judgment-debtor personally with a declaration in the decree that the decree-holders are entitled to a lien over the properties—a mortgage decree having been expressly refused by the decreeing Court—the decree is merely a money-decree with a declaration of lien over the properties. Rr. 14 and 15 of O. XXXIV stand in the way of properties being sold in execution of such a decree. The decree-holder's only course is to institute a suit for sale in enforcement of the mortgage. *Mungul Pershad Dichit* v. *Grija Kant Lahiri, I. L. R. 8 Calc. 51*, distinguished. GOBINDA CHANDRA PAL *v.* KAILAS CHANDRA PAL (1917). **I. L. R. 45 Calc. 530**

3. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 232, 248—Application for transmission of decree, whether application for execution—Order under s. 284, without notice, whether without jurisdiction.* An order for execution made under s. 248 of the Civil Procedure Code of 1882 (O. XXI, r. 22 of the Civil Procedure Code of 1908) without notice is without jurisdiction and is

EXECUTION OF DECREE—*contd.*

a nullity. Notice given to the representative of the judgment-debtor of the application for transmission of the decree cannot be treated as notice given upon a previous application for execution within the meaning of s. 248 of the Code of 1882. *K* obtained a decree on 19th June 1896 against *D* in the High Court. On 18th May 1907 an application was made by the son of *K* (*K* dying in the meantime) for transmission of the decree to the District Court of Murshidabad for the purpose of having the decree executed. On 23rd August 1907 order for transmission was made by the High Court in the presence of the judgment-debtor. The decree was not transmitted. On 4th September 1907 an application was made by the son of *K* for the attachment and sale of certain premises in Calcutta, without notice to the representatives of *D* (*D* having died in the meantime). On 17th September 1907 an attachment was made of the property in Calcutta and on 29th July 1908 an order for sale was made. Both the orders were made without notice. On the 29th August 1916 the respondent who is the assignee of the decree made an application for leave that he might be allowed to proceed with the sale of the attached property in terms of the order of the 29th August 1908. *Held*, that inasmuch as the application for attachment, dated 4th September 1907, was made without notice, the attachment of the 17th September 1907 and the order for sale of the 29th of July 1908 were made without jurisdiction and consequently no legal proceedings can be taken on the basis thereof. *Held*, further, that the order for transmission, dated 23rd August 1907, was not an order passed on a previous application for execution. MAHARAJ BAHADUR SINGH *v.* INDAR CHAND BOTHRA (1917) . . **22 C. W. N. 390**

4. ——————— *Composite decree consisting of separate decrees,—Execution of one of such decrees, if saves the others from bar of limitation—Limitation Act (IX of 1908), Art. 182, expl. I.* The defendants held three separate tenancies under the plaintiffs who instituted one suit against him for arrears of rent in respect of the three tenancies. At the instance of the plaintiffs a decree was made specifying the sum due in respect of each of the tenancies with an order for the realisation of the sums in arrear from the respective tenancies. Within three years, the plaintiffs applied for execution of the decree only in respect of the sum decreed with regard to the third tenancy. Thereafter more than three years from the date of the decree they applied for execution in respect of the entire amount of the three tenancies. *Held*, that the position was precisely the same as if the plaintiffs had brought three distinct suits for rent against the defendants, one in respect of each tenancy, and by taking out execution in respect of one decree they were not protected from the bar of limitation in respect of the other decrees and the second application for execution was barred by limitation with regard to the sums claimed for the first and second tenancies, but in respect of the sum due from the third tenancy the application was in time as made within three years from the date of the first application. That there might be nominally one decree passed in a suit which is essentially of a composite character and contains a number of separate decrees in respect of which the law of limitation will be separately enforced. This principle which underlies the decision of the Full Bench in *Wise* v. *Raj Narain Chakrabarty, 19*

EXECUTION OF DECREE—*concld.*

W. R. 30, met with legislative approval and is embodied in explanation (1) to Art. 182 of the Limitation Act, 1908, which is in terms identical with explanation (1) to Art. 179 of the Act of 1877. DHIRENDRO NATH SARKAR *v.* NISCHINTAPUR COMPANY (1916) . . . . **22 C. W. N. 192**

EXECUTION OF MORTGAGE.

See PARDANASHIN LADY.
I. L. R. 45 Calc. 748

EXECUTION PETITION.

——— *Prayer herein for attachment—Attachment ordered—Failure to pay batta—Presumed oral application at the hearing of the petition to issue warrant of attachment—Whether such application is step in aid of execution—Part-payment entered in the petition—Civil Procedure Code (Act V of 1908), O. XXI, r. 2, cl. 1, whether certificate of payment proved—Limitation Act (IX of 1908), s. 20, saving of limitation.* Where an assignee of a decree filed a petition for execution on the 13th July 1911 and an order of attachment was made on the day of hearing, the 12th August 1911, and the petition was subsequently dismissed on the 26th August 1911 on his failure to pay batta within the time allowed, and a fresh application was filed on the 10th August 1914. *Held*, that, though in the above circumstances, the Court might presume that the decree-holder made an oral application on the day of hearing to proceed with the execution such application was not a step in aid of execution and that the second application filed more than three years after the date of the first was barred by limitation. *Held*, also, that the part-payment of a decree amount entered in an execution petition, presented within three years from the date of such alleged payment amounts, if the fact of payment is proved, to a certificate of payment under O. XXI, r. 2 of the Code of Civil Procedure, and will operate to save limitation under s. 20 of the Limitation Act. *Rajam Aiyar* v. *Anantharatnam Aiyar, 29 Mad. L. J. 669*, and *Lakhi Narain* v. *Felamani Dasi, 20 C. L. J. 131*, referred to. MASILAMANI MUDALIAR *v.* SETHUSWAMI AYYAR (1917) . **I. L. R. 41 Mad. 251**

EXECUTION PROCEEDINGS.

See JURISDICTION. **I. L. R. 45 Calc. 926**

——— **transfer of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 70; O. XXI, R. 72.
I. L. R. 42 Bom. 621

EXECUTION SALE

——— **confirmation of—**

See MORTGAGE . **I. L. R. 41 Mad. 403**

EXECUTOR.

——— *Powers and duties of executor—Personal liability—Right to indemnity—Interest of minor in conflict with that of executors—Necessity of minor being represented—Insufficiently stamped hundis—Plaintiff's remedy.* Before the Hindu Wills Act (XXI of 1870), the position of an executor under the Hindu law was that of a manager. When the Hindu Wills Act incorporated s. 179 of the Succession Act, the executor acquired a statutory position. An executor under the statute is the legal representative of a deceased person for all purposes and all the property of the deceased person vests in him as such. He is

EXECUTOR—*concld.*

accordingly, in many respects, in a different position from a Hindu widow succeeding to her husband's estate a guardian of a minor, or a *shebait* of an idol. The estate of the testator is absolutely vested in the executor for the purpose of administration and he can deal with it, as he pleases, subject to his responsibility as executor for the due administration of the estate. The executor who borrows money in the course of the administration for the purposes of the estate, is personally responsible for the repayment of such debts, though he is entitled to be indemnified out of the estate for such borrowing if he shows that it was reasonably and properly made. *Labouchere* v. *Tupper, 11 Moo. P. C. 198, Farhall* v. *Farhall, L. R. 7 Ch. 123, Romanath Paul*, v. *Kanai Lal Dey, 7 C. W. N. 104, Debendra Nath Biswas* v. *Hem Chandra Roy, I. L. R. 31 Calc. 253, Satya Prashad Pal Choudhry* v. *Matilal Pal Chowdhry, I. L. R. 27 Calc. 683*, referred to. When an executor carries on the business of his testator—whether he does so for the purpose of winding it up or of making it over as a going concern to the person or persons entitled to inherit it, there does not appear to be any difference between his duties in so doing and his duties in dealing with any other part of the testator's estate. The responsibility rests entirely upon him subject only to his ultimate rights to be indemnified out of the estate Where hundis in a suit are insufficiently stamped, it is open to the plaintiff to give the go-by to the hundis, which are inadmissible in evidence, and sue for the consideration. *Golap Chand Marwaree* v. *Thakurani Mohokoom Kooaree, I. L. R. 3 Calc. 314, Pramatha Nath Sandal* v. *Dwarka Nath Dey, I. L. R. 23 Calc. 851*, referred to. Ordinarily the executors represent the estate but not in a case where their personal interests as executors are diametrically opposed to those of the minor. When such is the position of affairs, the minor's interests must be safeguarded and the minor properly represented at the trial. SUDHIR CHANDRA DAS *v* GOBINDA CHANDRA ROY (1917)
I. L. R. 45 Calc. 538

EXTENSION OF TIME.

See DECREE . **I. L. R. 40 All. 579**

F

FAIR COMMENT.

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

FALSE EVIDENCE.

See PENAL CODE (ACT XLV OF 1860), S. 192 . . **I. L. R. 40 All. 3**

FALSE MEASURE.

See PENAL CODE (ACT XLV OF 1860), S. 266 . . **I. L. R. 40 All. 84**

FAMILY CUSTOM.

See CUSTOM . **I. L. R. 45 Calc. 450**
. **I. L. R. 45 Calc. 835**

FICTITIOUS TITLE.

See EX PARTE DECREE.
I. L. R. 45 Calc. 920

FINE (RECURRING).

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), S. 307.
I. L. R. 41 All. 569

FIXTURES.

See ADMINISTRATION.
I. L. R. 45 Calc. 653

FORECLOSURE.

See REGULATION NO. XVII OF 1806, S. 8.
I. L. R. 40 All. 387

FOREIGN-COURT DECISIONS.

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 45 Calc. 878

FOREIGN SHIP.

——— **offence committed in—**

See HIGH SEAS . **I. L. R. 42 Bom. 234**

FOREIGNER.

——— **offence committed by—**

See HIGH SEAS . **I. L. R. 42 Bom. 234**

FOREST.

See FOREST ACT (VII OF 1878), S. 25 (*i*).
I. L. R. 40 All. 38

FOREST ACT (VII OF 1878).

——— **s. 25** (i)—*Hunting without a permit in a reserved forest.* Four persons made up a party and went, without having a permit, to shoot in a reserved forest. Two of the party shot deer; the two other sho nothing. *Held*, that the two members of the party who had not shot anything could properly be convicted of hunting in a reserved forest within the meaning of s. 25 (*i*) of the Indian Forest Act, 1878. EMPEROR *v.* BARKAT ALI (1917).
I. L. R. 40 All. 38

——— **s. 25, cl.** (i), **r. 3** (a)—*Shooting in a reserved forest without license—Tracking and shooting a tiger to preserve one's property.* The accused, finding that his cattle were killed by a tiger, tracked and shot the animal in a reserved forest without a license. *Held*, that the accused was guilty of a technical offence under r. 3 (*a*) framed under the provisions of s. 25, cl. (*i*) of the Indian Forest Act, 1878. EMPEROR *v.* AMIRSAHEB BALAMIYA (1918) . . **I. L. R. 42 Bom. 406**

FORFEITURE.

See LEASE . **I. L. R. 42 Bom. 734**

——— **of lease—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111, CL. (*g*).
I. L. R. 42 Bom. 195

FORFEITURE OF ADOPTION.

See BURMESE BUDDHIST LAW.
I. L. R. 45 Calc. 1

FORM OF WARRANT.

See SEARCH WARRANT.
I. L. R. 45 Calc. 905

FORMALITIES.

See DEPOSITION . **I. L. R. 45 Calc. 825**

FRAUD.

——— **plea of—**

See EVIDENCE ACT (I OF 1872), S. 92.
I. L. R. 42 Bom. 512

FRAUD—*concld.*

——— *Judgment obtained by perjured evidence—Suit to set aside, whether maintainable.* A suit does not lie to set aside a judgment in a previous suit on the ground that it was obtained by perjured evidence. *Venkatappa Naick* v. *Subba Naick, I. L. R. 29 Mad. 179*, overruled. KADIRVELU NAINAR *v.* KUPPUSWAMI NAIKER (1918).
I. L. R. 41 Mad. 743

FRAUDULENT ALIENATION.

——— *To defeat or delay creditors, whether binding until set aside by suit—Transfer of Property Act (IV of 1882), s. 53, nature of suit under—Attachment of alienated property—Claim by alienee—Suit by unsuccessful claimant—Plea of attaching decree-holder of fraudulent nature of alienation validity of.* An alienation which is not a sham transaction but is only a fraudulent one intended to defeat or delay creditors of the alienor is only voidable and continues in force until set aside in proceedings properly instituted for the purpose; and in a suit by the alienee to set aside an adverse order passed against him in claim proceedings, it is not open to an attaching decree-holder against the alienor to plead in defence the fraudulent character of the alienation. *Palaniandi Chetti* v. *Appavu Chettiar 30, Mad. L. J. 565*, approved and *Abdul Kadir* v. *Ali Mia, 14 I.C., 715; 15 C. L. J. 649*, not followed. *Quœre*: Whether a suit by a creditor to avoid an alienation as infringing s 53 of the Transfer of Property Act must be brought in a representative capacity on behalf of all the creditors? SUBRAHMANYA AYYAR *v.* MUTHIAH CHETTIAR (1917).
I. L. R. 41 Mad. 612

FRAUDULENT REPRESENTATION.

See RES JUDICATA.
I. L. R. 45 Calc. 442

FRENCH SUBJECT.

——— **will of—**

See PROBATE AND ADMINISTRATION ACT, S. 5 . . . **22 C. W. N. 713**

FRIVOLOUS OR VEXATIOUS ACCUSATION.

See CRIMINAL PROCEDURE CODE, S. 250.
I. L. R. 40 All. 79

FULL BENCH.

See REFERENCE TO FULL BENCH.

FULL COURT.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 38.
I. L. R. 42 Bom. 80

G

GAINS BY SKILL.

See HINDU LAW—JOINT FAMILY.
I. L. R. 45 Calc. 666

GAINS IN BUSINESS.

See HINDU LAW—JOINT FAMILY.
I. L. R. 45 Calc. 666

GAINS OF SCIENCE OR LEARNING.

See HINDU LAW—JOINT FAMILY.
I. L. R. 45 Calc. 666

GAMBLING.

See PUBLIC GAMBLING ACT (III OF 1867), S. 13 . . I. L. R. 40 All. 517

GENERAL CLAUSES ACT (X OF 1897).

——— application of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIII.
I. L. R. 41 Mad. 624

GENERAL CLAUSES ACT (U. P. I. OF 1904).

——— s. 24—*Effect of General Clauses Act as regards rules framed under the former Municipalities Act of 1900—Municipal Account Code, s. 40—Octroi duty.* A consignment of cloth addressed to one *M* reached one of the octroi barriers of Bareilly on the 19th of February 1917. The Officer in charge demanded a larger sum than *M* considered properly leviable. The matter was referred to the Octroi Superintendent who, as he had the right to do, assessed the duty at Re. 1-0-9. Under r. 40 of the Municipal Account Code framed under Act No. 1 of 1900, a person in the position of *M* could appeal against the decision within sixty days, but he could only exercise the right by first paying under protest the duty demanded. *M*, however, appealed against the decision without making the payment. On the expiry of sixty days a prosecution was instituted against *M* under Act No. II of 1916, and he was fined. He applied in revision to the High Court, *Held*, that the conviction was legal; the jurisdiction of the Court was saved by s. 24 of the Local General Clauses Act, and the fact that the prosecution had been instituted under the Municipal Account Code framed under the repealed Municipalities Act (I of 1900), did not affect the question. *Held*, also, that the mandatory direction in r. 40 of the Municipal Account Code lays down, by inference, a period of 53 days, on the expiry of which without payment as required the offence is complete and a prosecution may be started. EMPEROR *v.* MANIK CHAND (1917).
I. L. R. 40 All. 105

GHATWALI TENURE.

1. ——— *Succession—Incidents of tenure—Rights of family.* Ghatwali tenure is ordinarily hereditary, the estate descending to such male member of the family as the zemindar approves as competent to perform the duties. It is the right of the family, unless there is no male member competent, to have one or more of the members appointed. The member appointed, however, does not hold on behalf of the family, and the other members have no rights in the land while it is in his hands as ghatwal. DURGA PRASAD SINGH *v.* TRIBINI SINGH (1918).
L. R. 45 I. A. 251

2. ——— *Ghatwali land, tenants of—Acquisition of right of occupancy—Bengal Tenancy Act (VIII of 1885), s. 181—Act X of 1859, s. 6, and Act VIII (B. C.) of 1869, s. 6.* Tenants in occupation of *ghatwali* land could acquire occupancy right therein under s. 6 of Act X of 1859 and s. 6 of Act VIII (B. C.) of 1869 and such right acquired between 1859 and 1885 has not been taken away by s. 181 of the Bengal Tenancy Act. SITIKANTA ROY *v.* BIPRA DAS CHARAN (1918).
22 C. W. N. 763

GIFT.

See GIFT WITH OBLIGATION.

See HINDU LAW—GIFT.

GIFT—*concld.*

See HINDU LAW—JOINT FAMILY.
I. L. R. 45 Calc. 732
I. L. R. 42 Bom. 69

See HINDU LAW—WIDOW.
I. L. R. 40 All. 518

See MAHOMEDAN LAW—GIFT.
I. L. R. 40 All. 238

——— for religious purpose—

See HINDU LAW—GIFT.
I. L. R. 462 Bom. 136

——— validity of—

See OCCUPANCY HOLDING.
I. L. R. 45 Calc. 434

——— *Construction of deed of gift—Zamindar giving away all his properties to his son retaining an allowance and some "zarait land" for maintenance—Donor's interest in "zarait land" a reversion—Sale of zamindari how affects "zarait land"—Construction of decree and sale proceedings—Symbolical possession, effect of, as against a party to proceedings.* Where a zemindar conveyed by gift all his properties to his only son, stipulating for a maintenance allowance of Rs. 400 a month to be paid to him by his son for his life and retaining 150 bighas of land in his "possession and occupancy as zirat land." *Held*, that the expression "zirat land" merely meant land retained by the donor for his personal use and maintenance without paying any rent thereof, etc.; that on the determination of his interest, the land was again to form part of the general zemindari property of the family, so that his son had in it a vested zemindari interest in reversion during the donor's lifetime. That the plaintiff who got possession of the zemindari property at a mortgage sale obtained possession of the reversionary interest in the "zirat land" subject to the life interest of the donor. That the fact that the Court deleted from the description of the properties ordered to be sold, the words "*mararazi zirat*" to bring it into conformity with the property as described in the mortgage bond did not lead to the exclusion of the "zirat land" from the sale, inasmuch as the true construction of the decree depended on what the Court actually ordered, not on what it refused to order. That symbolical possession given to the plaintiff was sufficient to dispossess the defendants in the mortgage suit and were donor's interest in execution were made defendants in the mortgage suit and were thus parties in the proceeding in which delivery of possession was ordered and given. RADHA KRISHNA CHANDERJI *v.* RAM BAHADUR (1917) . . . . . 22 C. W. N. 330

GIFT WITH OBLIGATION.

See CONTRACT ACT (IX OF 1872), S. 69.
I. L. R. 42 Bom. 93

GOVERNMENT OF INDIA ACT, 1915.

——— s. 107—

See CRIMINAL PROCEDURE CODE, S. 145.
I. L. R. 40 All. 364

GOVERNMENT RESOLUTION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 197, 210, 215.
I. L. R. 42 Bom. 172

GRANT.

See CUSTOM . I. L. R. 45 Calc. 835

GRANT—*concld.*

——— *Grant of land by Government as bounded by a non-navigable river—Right of grantee to half the bed of the river presumption as to—Onus of proving contrary on grantor. Held* by the Full Bench :—(i) That in the case of a grant of land by Government described as bounded by a non-navigable river, the presumption (which may be strong or weak according to circumstances of each case) is that the grant passes to the grantee the bed of the river *ad medium filum aquae*, and (ii) that the onus of showing the contrary is on the grantor. VENKATA LAKSHMINARASAMMA *v.* THE SECRETARY OF STATE (1918).
I. L. R. 41 Mad. 840

GRATUITOUS PAYMENT.

See CONTRACT ACT (IX OF 1872), s. 70.
I. L. R. 40 All. 555

GRIEVOUS HURT.

See PENAL CODE ACT (XLV OF 1860), SS. 304 AND 325.
I. L. R. 40 All. 103

See PENAL CODE (ACT XLV OF 1860), SS. 300, 325, EXCEP. 4.
I. L. R. 40 All. 686

GUARANTEE.

See CONTRACT ACT (IX OF 1872), SS. 126, 128 . . **I. L. R. 42 Bom. 444**

GUARDIAN.

See HINDU LAW—CO-PARCENER.
I. L. R. 41 Mad. 561

See HINDU LAW—REVERSIONER.
I. L. R. 45 Calc. 590

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— **s. 34**—*Civil Procedure Code (Act V of 1908), s. 36—Order—Decree—Marriage expenses of person dependent on the ward—Order against guardian—Ward attaining majority—Discharge of guardian—Application for execution against ward after majority—Jurisdiction of Court to order execution—Omission to object before attachment—Waiver—Estoppel.* An order under s. 34 of the Guardians and Wards Act directing a guardian to pay a sum of money out of his ward's estate for the marriage expenses of a person dependent on his ward is neither a decree nor an order executable as a decree under the Civil Procedure Code, and cannot be enforced against the ward after he has attained majority and the guardian has been discharged. There being an initial want of jurisdiction in the Court to execute such an order, the omission of the ward to object, after notice, to an order for attachment of his property, does not estop him from objecting to the jurisdiction of the Court to sell the property after attachment. *Somakka* v. *Ramiah, I. L. R. 36 Mad. 39*, referred to. PARVATHAMMAL *v.* CHOKKALINGA CHETTY (1917).
I. L. R. 41 Mad. 241

GUARDIANSHIP.

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 45 Calc. 878

H

HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895).

——— **s. 5—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, EXPL.
I. L. R. 41 Mad. 418

HIGH COURT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . **I. L. R. 42 Bom. 119**

——— **error of law—**

See EVIDENCE ACT (I OF 1872), S. 58.
I. L. R. 42 Bom. 352

——— **inherent jurisdiction of—**

See CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898), S. 48 (*11*).
I. L. R. 42 Bom. 54

——— **revisional jurisdiction of—**

See CIVIL PROCEDURE CODE (1908), S. 115.
I. L. R. 40 All. 674

HIGH COURT, JURISDICTION OF.

See JURISDICTION OF HIGH COURT.

See MUNICIPAL ELECTION.
I. L. R. 45 Calc. 950

HIGH COURT RULES (U. P. 1908).

See CIVIL PROCEDURE CODE (1908), S. 122 . . . **I. L. R. 40 All. 1**

HIGH SEAS.

——— *Offence committed by a foreigner on a foreign ship—The ship 18 miles off Karwar coast—Jurisdiction of British Indian Court to try the accused—Admiralty Offiences (Colonial) Act (12 & 13 Vic., c. 96)—Statute 23 & 24 Vic., c. 88. Merchant Shipping Act (57 & 58 Vic., c. 60), s. 686.* The accused who was a subject of the State of Junaghad, committed an offence on a ship owned by a subject of the Junaghad State, when it was on the high seas some 18 miles off the coast of the Kanara District. A question having arisen whether he could be tried for the offence by the First Class Magistrate of Karwar. *Held*, that the Magistrate had no jurisdiction to try the accused. EMPEROR *v.* PUNJA GUNI (1917).
I. L. R. 42 Bom. 234

HINDU LAW—

	COL.
ADOPTION	145
ALIENATION	147
BOND	148
CONVERSION	148
COPARCENERS	149
CUSTOM	149
DEBT	149
ENDOWMENT	150
FAMILY BUSINESS	150
GIFT	150
GRANT	150
INHERITANCE	151
JOINT FAMILY	153

HINDU LAW—*contd.*

	Col.
Leprosy	156
Mortgage	156
Partition	156
Religious Office	158
Reversioners	158
Stridhan	161
Succession	161
Surety	161
Widow	161
Widow's Estate	162

See Transfer of Property Act (IV of 1882), s. 6 (*a*) . **I. L. R. 40 All. 692**

HINDU LAW—ADOPTION.

1. ——————— *Adopted person having no son born but having one in conception—Such son passes into the adoptive family.* At the time when a person was adopted he had no son born but had a son who was conceived. A question having arisen whether such a son passed on adoption into the adoptive family. *Held*, that for all purposes of succession and inheritance the legal entity of the after-born son must be taken to date from the date of his birth; and that, therefore, the after-born son passed into the adoptive family. Advi *bin* Fakirappa *v.* Fakirappa Adiveppa (1918) . . . . **I. L. R. 42 Bom. 547**

2. ——————— *Adoption by widow of son to deceased husband—Subsequent suit by her to set aside adoption on ground that she had no authority—Estoppel, dismissal of suit on ground of—Decision by Privy Council that she had authority and that adoption was valid—Decree properly made against widow representing estate, binding effect of on reversioner—Res judicata—Civil Procedure Code (1908), s. 11.* After adopting a son to her deceased husband a Hindu widow in a suit by an alleged reversioner against her to set aside the adoption on the ground that she had no authority from her husband to make the adoption alleged in her written statement and stated in Court, through her pleader that she had authority to make the adoption, and that it was valid. The suit was dismissed because the plaintiff was found not to be a reversioner. The widow then brought a suit against the adopted son to set the adoption aside, pleading that she was not vested with authority from her husband to adopt and denied having made the adoption. The adopted son contested the suit and it was decided by the Courts in India on the ground that the widow was estopped from maintaining it. On appeal, however, the Privy Council raised an issue as to her authority to adopt, and held on the evidence on that issue that the adoption was valid. In a suit by an alleged reversioner to the estate of her husband against the adopted son for a declaration that the adoption was invalid and for possession of the estate. *Held*, that notwithstanding the personal estoppel which bound her, the widow represented the estate on the question of fact as to whether the defendant (respondent) had or had not been validly adopted, and that she represented it within the meaning of the rule laid down in *Katama Natchiar* v. *The Raja of Shivagunga, 9 Moo. I. A., 539*, and under the circumstances the decree against her would bind the reversioners. Though the rule of *res judicata* as enacted in s. 11 of the Code of Civil Procedure, 1908, was not strictly applicable, as the appellants (plaintiffs) were not parties to the widow's suit against the adopted son, and did not claim through a party to that suit, yet the principle of *res judicata* had been rightly applied by Courts in India so as to bind reversioners by decisions in litigation fairly and honestly given for or against Hindu females representing estates. In the absence of all authority their Lordships could not decide that a Hindu lady, otherwise qualified to represent an estate in litigation, ceases to be so qualified merely owing to personal disability or disadvantage as a litigant, although the merits of the case were tried, and the trial was fair and honest. Risal Singh *v.* Balwant Singh (1918). **I. L. R. 40 All. 593**

HINDU LAW—ADOPTION—*contd.*

3. ——————— *Assent of nearest sapindas not sought—Consent of remote sapindas whether sufficient—Knowledge that sapinda will refuse, whether a good ground for not asking for his consent.* In the Dravida country an adoption by a Hindu widow having no authority from her deceased husband to adopt, made with the consent of remote sapindas but without asking for the consent of the nearest sapindas is invalid. It is immaterial that the widow knew that the nearest sapindas, if asked for their consent, would have refused. it. *Collector of Madura* v. *Mootoo Ramalinga Sathupathy, 12 Moo. I. A. 397, 400, 440*. *Venkata Krishna Rao* v. *Venkata Rama Lakshmi, I. L. R. 1 Mad. 174, 190; L. R. 4 I. A., 1, 13, 14*, and *Raghunada Deo* v. *Brozo Kishore Patta Deo, I. L. R. 1 Mad. 69;* s. c., *L. R. 3 I. A. 154*, discussed and followed. *Quære:* Whether the widow of a co-parcener, who died in or before 1853 could adopt a son in 1896 after the joint family property had vested in the widow of his brother's son? Veerabasavaraju *v.* Balasurya Prasada Rao (1918) . . . **I. L. R. 41 Mad. 998**

4. ——————— *Adoption by widow—Consent of Sapindas—Revocation of consent, effect of—Arbitrary revocation, whether competent—Delay in adoption or death of Sapinda, effect of—Divesting of estate.* A Sapinda, who has given his consent to a widow to make an adoption to her husband, cannot *arbitrarily* withdraw his consent before it is acted upon by the widow. The party giving his consent can deliberately revoke it for justifiable reason, but where no reasons are given by him, Courts will not find out a justification for the revocation. Mere lapse of time without more, or the death of the consenting *Sapinda* will not put an end to a consent freely and *bonâ fide* granted. The assent of the Sapinda is presumptive evidence of the goodness of the act of adoption by the widow. Analogy of the rules as to consent of the nearest reversioner to an *alienation* by a widow applied. *Sri Virada Pratapa Raghunada Deo* v *Sri Brozo Kishore Patta Deo, I. L. R. 1 Mad. 69, Bhimappa* v. *Basawa, I. L. R. 29 Bom. 400; Narasimha* v. *Parthasarathy, I. L. R. 37 Mad. 199*, referred to. *Mami* v. *Subarayar, I. L. R. 36 Mad. 145*, and *Subrahmanyam* v. *Venkamma, I. L. R. 26 Mad. 635*, explained. Where a widow, having succeeded as heir to her adopted son who died unmarried, adopted, with the consent of the nearest Sapinda, another son to her late husband, the latter would divest the estate vested in the adoptive mother, whether the estate was the ancestral or the self-acquired property of the first adopted son

HINDU LAW—ADOPTION—*concld.*

Vallanki Vendata Krishna Rao v. *Venkata Rama Lakshmi, I. L. R. 1 Mad. 174,* and *Mussumat Bhoobum Noyee Debia* v. *Ram Kishore Acharj Chowdry, 10 Moo. I. A. 209,* referred to. SURYANARAYANA *v.* RAMADOSS (1917).

I. L. R. 41 Mad. 604

5. ——————— *Dvyamushyayana form—Presumption.* Under Hindu law, in the absence of any express agreement to the effect that the adoption was to be in the *Dvyamushyayana* form, it must be presumed to be an ordinary adoption. *Laxmipatirao* v. *Venkatesh, I. L. R. 41 Bom. 315,* followed. HUCHRAO TIMMAJI *v.* BHIMARAO GURURAO (1917) . **I. L. R. 42 Bom. 277**

6. ——————— *Successive adoptions—Limit for exercise of power to adopt—Death of first adopted son leaving widow but no son—Second adoption by widow of previous owner of impartible zemindari—Family governed by Mitakshara Law—Divesting of property by adoption—Rule that adoption must be made to last male owner.* *A,* the holder of an impartible zemindari and a member of a joint family governed by Mitakshara Law, gave authority to his wife to adopt a son to him. On *A's* death his brother *R* took possession of the property. The widow subsequently adopted a son *B* who recovered the estate of *R* and held it until 1906, when he died leaving a widow but no son. A descendant of *R* then took possession of the property but died in the same year, and was succeeded by his son the respondent. In 1907 *A's* widow purported to make a second adoption to *A* under the authority from him by taking in adoption the appellant. In a suit brought by him to recover the zemindari: *Held,* that the law imposed a limit within which a widow can exercise a power of adoption conferred on her, and the limit to her power was reached when *B* died after attaining full legal capacity to continue the line of descent either by a natural born son, or by the adoption to him of a son by his own widow against whom it had not been established (she not being a party to the suit) that she had no power to adopt. This conclusion was in no way in conflict with the previous decision of the Board in *Raghunada Deo* v. *Broza Kishore Patta Deo, I. L. R. 1 Mad. 69; L. R. 3 I. A. 154.* It was therefore not necessary to decide whether the authority to adopt empowered *A's* widow to take a second adoption. MADANA MOHANA DEO *v.* PURUSHOTTHAMA DEO (1918).

I. L. R. 41 Mad. 855

HINDU LAW—ALIENATION.

1. ——————— *Mortgage by manager of joint family who was not father of the other members—Burden of proof of legal necessity for mortgage—Where no necessity proved the interest of such manager not saleable in enforcement of mortgage—Mortgage only operative to the extent to which the mortgage money was proved to be necessary.* The mortgage of joint estate made by the manager of a joint family who is not the father of the other members of the family can only be justified so far as it is wanted for the joint family purposes. If the necessity cannot be established by direct evidence, it may be assumed if it can be shown that reasonable care was taken to ascertain if such circumstances existed, and the transferee acted in good faith [s. 38 of the Transfer of the Property Act (IV of 1882)]. In either case the burden of proof lies on the person who claims the benefit of the mortgage. *Bhanga Chandra Dhur Biswas* v. *Jagat Kishore Acharjya Chaudhuri, I. L. R. 44 Calc. 186 : L. R. 43 I. A. 249,* followed. There was no difference between the burden of proof when it is desired to support a mortgage made by a manager of a joint estate, and that which is required to support the mortgage made by a widow who has only a similar limited power of disposition. If the debt was not incurred for family necessity, the interest of the manager of the family with respect to mortgages in the same province as that from which the present case has been brought, cannot be sold in enforcement of the mortgage. *Lachman Prasad* v. *Sarnam Singh, I. L. R. 39 All. 500; L. R. 44 I. A. 163,* referred to. In the present case the mortgagee had only discharged the burden thrown upon him of proving necessity for the deed to the limited extent as held by the High Court and the security, therefore, stood only to the limited extent proved. ANANT RAM *v.* COLLECTOR OF ETAH (1917) . . **I. L. R. 40 All. 171**

HINDU LAW—ALIENATION—*concld.*

2. ——————— *Widow's alienation, not for necessary purpose—Subsequent adoption—Right of adopted son to set aside alienation and recover alienated property.* A Hindu widow alienated certain properties for a purpose not binding on the inheritance, and thereafter adopted a son. *Held* by the FULL BENCH, that the alienation was not binding on the adopted son and that he could sue, during the life time of the widow, to set aside the alienation and recover the properties so alienated, his cause of action arising from the time of his adoption. *Sreeramulu* v. *Kristamma, I. L. R. 26 Mad. 143,* overruled. *Bononali Roy* v. *Jagat Chandra Bhowmick, I. L. R. 32 Calc. 669,* and dictum in *The Collector of Madura* v. *Mootoo Ramalinga Sathupathy, 12 Moo. I. A. 397, 443,* followed. VAIDYANATHA SASTRI *v.* SAVITERI AMMAL (1917) . . . **I. L. R. 41 Mad. 75**

HINDU LAW—BOND.

——————— *Suit on bond executed by deceased Hindu against his widow and brothers—Form of decree.* Plaintiff, after the death of the obligor, a Hindu, sued his widow and brothers to recover the amount due on a bond. It was found that the obligor and his brothers were joint. *Held,* that the plaintiff was still entitled to a decree against the widow which might be executed against any self-acquired property of the deceased obligor n her hands. PAHALWAN SINGH *v.* JANKI (1917).

I. L. R. 40 All. 17

HINDU LAW—CONVERSION.

——————— *Conversion of a Hindu widow to Muhammadan and marriage with a Muhammadan—Sec. 2 of Hindu Widow's Re-Marriage Act (XV of 1856)—Forfeiture of Hindu husband's estate.* *Held* by the Full Bench (SESHAGIRI AYYAR, *J.*, dissenting), that a Hindu widow, who becomes a Muhammadan, forfeits under the Hindu Law, by her re-marriage, her interest in her Hindu husband's estate. *Murugai* v. *Viramakali, I. L. R. 1 Mad 226,* followed. *Moniram Kolita* v. *Kery Kolitani, I. L. R. 5 Calc. 776,* distinguished; *Choudappa* v. *Narasamma, 23 Mad. L. T. 81,* overruled. *Held,* further, by WALLIS, *C.J.* (OLDFIELD, *J.*, and SESHAGIRI AYYAR, *J.*, *contra*)—She forfeits also under s. 2 of Act XV of 1856, which only embodied the existing law on the subject. *Per* SESHAGIRI AYYAR *J.*—Neither by Hindu Law nor by section

HINDU LAW—CONVERSION—*concld.*

2 of Act XV of 1856, which is only an enabling Act, does she forfeit her interest. VITTA TAYARAMMA *v.* CHATAKONDU SIVAYYA (1918).

I. L. R. 41 Mad. 1078

HINDU LAW—CO-PARCENERS.

1. ——— *Co-parceners—Junior member of a joint Hindu family—Bond in the name of manager—Payment to a junior member during lifetime of manager—Liability of promisor—Discharge—Rule as to co-heirs and co-promisees—English Law.* Payment made to a junior member of a joint Hindu family during the lifetime of its manager in whose favour a bond has been executed, will not discharge the promisor from his liability under the bond. Rule as to co-heirs applied, and the rulings as to co-promisees considered, and cases reviewed. ANKALAMMA *v.* CHENCHAYYA (1917).

I. L. R. 41 Mad. 637

2. ——— *Mitakshara joint family—Power of adult co-parcener to appoint by will a guardian for minor co-parcener's property. Held* by the Full Bench, that the only adult co-parcener of a Mitakshara family consisting of himself and his minor co-parceners, is not competent to appoint a testamentary guardian to the co-parcenary properties of the minor co-parceners. *Cases* on the subject reviewed. CHINDAMBARA PILLAI *v.* RANGASWAMI NAICKER (1918) . **I. L. R. 41 Mad. 561**

HINDU LAW—CUSTOM.

——— *Suit by widow for maintenance—Alleged custom of forfeiture of right by widow not residing in the family dwelling-house—Custom, if applies when absence due to just and reasonable cause.* Where the plea set up in defence to a suit for maintenance by a widow who had ceased to reside in the family dwelling-house was a family custom under which, it was alleged, a widow, unless she resided at the place appointed for her residence, forfeited her right to maintenance: *Held,* that such a custom, even if established, does not deal with the question of an absence from the appointed residence due to just and reasonable causes. BRAJA SUNDAR DEB *v.* SWARNA MANJARI DEI (1917) . . **22 C. W. N. 433**

HINDU LAW—DEBT.

——— *Promissory note executed by father before partition—Renewal of the note by father after partition—Son's liability on such note—Pious obligation to discharge father's debts, extent of.* A Hindu son is not liable during his father's lifetime on a promissory note executed by his father after partition in renewal of a note executed by the father before partition. The recent decision of the Judicial Committee in *Sahu Ram Chandra* v. *Bhup Sing, L. R. 44 I. A. 126,* does not overrule the long line of decisions as to the right of the creditor of a Hindu father to sue the father and the sons for an antecedent debt incurred by the father for purposes neither illegal nor immoral and to attach and to bring to sale the interest of the sons as well as of the father in execution of the decree in such a suit. *Per* KUMARASWAMI SASTRIYAR, *J.* The decision in *Sahu Ram Chandra* v. *Bhup Sing, L. R. 44 I. A. 126,* makes it clear that it is the primary duty of the father to pay debts incurred by him not for any family necessity but for his own purposes and that the pious duty of the son assuming that it arises at all during the lifetime of the father, arises only if the father's share or his self-acquisitions are insufficient to meet the debts. PEDA VENKANNA *v.* SREENIVASA DEEKSHATULU (1917).

I. L. R. 41 Mad. 136

HINDU LAW—DEBT—*concld.*

HINDU LAW—ENDOWMENT.

——— *Religious endowment—Guardian of minor Mahant of Math—Power of disposition over Asthal property and acquisitions thereout and income thereof—Debts of Mahant when binds Math—Suit to set aside sale by successor.* The whole assets of an *Asthal* or *Math* are vested in the *Mahant* as the owner in trust for the institution; and although large administrative powers are undoubtedly vested in the reigning *Mahant,* the trust does exist and must be respected. *Held,* that in this case a village, L., attached to the *Asthal,* was endowed property subject to the trust set out in the grant, and all acquisitions with the income thereof were subject to the same trust. A guardian of a minor *Mahant* has no larger powers of disposition over endowed property than the actual *Mahant* In the absence of a necessity which would make the debts contracted by him binding on the institution, the *Mahant* has no power to alienate its properties for the purpose of discharging those debts, and if the *Asthal* was not liable for such debts his successor would be clearly entitled to have the sales set aside. *A fortiori* the same considerations apply to the dealings of the guardian of a minor *Mahant,* and the latter can sue to have the guardians' sales set aside on the same grounds. BASUDEO ROY *v.* MAHANT JUGAL KISHWAR DAS (1918) . . **22 C. W. N. 841**

HINDU LAW—FAMILY BUSINESS.

See CONTRACT ACT, S. 239.

I. L. R. 41 Mad. 824

HINDU LAW—GIFT.

1. ——— *Gift for religious purposes—Hindu widow can make a gift for religious purposes of a reasonable portion of her husband's property—Civil Procedure Code (Act V of 1908), O. XXVI, r. 1—Commission to examine witnesses.* It is not competent to a Hindu widow to make a religious gift of the whole or practically the whole of her husband's property for the religious benefit of her husband. The Courts should not allow witnesses to be examined on commission without adequate reasons. PANACHAND CHHOTALAL *v.* MANOHARLAL NANDLAL (1917).

I. L. R. 42 Bom. 136

2. ——— *Gift to Hindu female—Construction of document—"Malik mustaqil."* A Hindu, being the full owner of certain property, made a gift thereof to his widowed daughter-in-law, describing the donee in the deed as *malik mustaqil.* There was no circumstance to counter-indicate that the donor intended that the donee should take less than the full estate in the property comprised in the deed. *Held,* that the donee took all the estate of the donor. *Surajmani* v. *Rabi Nath Ojha, I. L. R. 30 All. 84,* referred to. NAULAKHI KUNWAR *v.* JAI KISHAN SINGH.

I. L. R. 40 All. 575

HINDU LAW—GRANT.

——— *Grants made of properties for non-religious and for religious and charitable purposes by Raja of Tanjore to his guru the ancestor of the parties—Suit for partition—Dispute*

HINDU LAW—GRANT—*concld.*

whether granted to the guru personally or to the office of head of a mutt held by him—Perpetual conducting of food chatram and building agrahar—Private charities, management of—Non-religious properties, liable to partition—Charities not liable. Grants of the property in suit had been made by the Raja of Tanjore from time to time to the ancestor of the parties a holy man whom the Raja brought to Tanjore as his *guru*. Some of the grants were for non-religious purposes and others for religious and charitable purposes in connexion with a mutt founded when the *guru* came to Tanjore; and the properties descended to a joint family the adult members of which consisted of three brothers, the eldest of whom (the appellant) was the manager of the joint family and the head of the mutt. To a suit by the second brother (the first respondent) to have partition of the non-religious properties, and as to the religious and charitable properties for a scheme of management in which he claimed a share, to be settled by the Court, the other brothers were made defendants, the youngest brother (as second defendant-respondent) supporting the plaintiff-appellant. *Held*, as to the non-religious properties (upholding the decision of the Courts in India), that there was nothing in the documentary evidence (the original grants, and confirmatory inam grants made by the Government after the escheat of the Tanjore Raj) or in any of the other circumstances of the case to take the descent of the properties out of the ordinary rule of inheritance, and they were therefore liable to partition. The objects for which the religious and charitable properties were given were described in the grants as being for the purpose "of perpetually conducting a food chatram near the tomb of a holy man, and in one case of making an agrahar by building houses round the holy place." *Held* (reversing the decision appealed from), that there was sufficient indication in the grants and in the surrounding circumstances of the case that a devolution of the management to the heirs of the original donee was inconsistent with the purposes of the founder who must be deemed to have intended that the religious charities should be administered by the man who was head of the mutt, to which office the eldest son of the previous holder would succeed, the office not being the subject of partition, but being indivisible among the members of the family, and the principles to be applied being those laid down in *Jafar* v. *Aji, 2 Mad. H. C. R. 19* and *Trimbak* v. *Lakshman, I. L. R. 20 Bom. 495.* Even if this were not so, *quære* whether the rules laid down in some cases as to the devolution of the management of private charities such as the support of a family idol would be applicable to charities such as those in question. SETHURAMASWAMIAR *v.* MERUSWAMIAR (1917) . . . **I. L. R. 41 Mad. 296**

HINDU LAW—INHERITANCE.

1. ——————— *Exclusion from Inheritance—Mitakshara Law—Blindness, not a disqualification unless congenital.* The appellant, as his only child and heir, sued for the property of her father, a Hindu who had become blind in the early years of his life, and remained so until his death, and had taken his separate share of the family property under a decree made on a compromise of a suit for partition brought against him by his younger brother, they having lived together as members of a joint family governed by the law of the Mitakshara. The defence by his brother, against whom the suit was brought, was that there had been no partition and that on his brother's death he became entitled to the whole family property by survivorship. He contended that his brother's blindness was congenital which excluded him from inheritance; but that even assuming he was not born blind but became so after birth he was, according to the Mitakshara law of the Benares school, excluded from participation of a share, inasmuch as the blindness occurred before the alleged partition. *Held*, that blindness to cause exclusion from inheritance must be congenital. Mere loss of sight which has supervened after birth is not a ground for disqualification. Incurable blindness, if not congenital, is not such an affliction as under the Hindu Law excludes a person from inheriting. Sarvadhicari's Hindu Law of Inheritance, page 956, referred to. *Mohesh Chunder Roy* v. *Chunder Mohan Roy, 14 B. L. R. 273; 23 Suth. W. R. 78*, and *Murarji Gokuldas* v. *Parvatibai, I. L. R. 1 Bom. 177*, approved and followed. GUNJESWAR KUNWAR *v.* DURGA PRASHAD SINGH (1917) . . . . **I. L. R. 45 Calc. 17**

HINDU LAW—INHERITANCE—*con'd.*

2. ——————— *Inheritance—Descent of taluqa in Oudh—Oudh Estates' Act (I of 1869), ss. 7, 8, 10, 22—Sanad granting descent by primogeniture—Properties subsequently acquired—'Accretions' and 'properties appurtenant to taluqa'—Property purchased by taluqdar—Intention to vary descent—Substitution of villages by Government—Crown Grants Act (XV of 1895), s. 2—Power of Crown to alter or limit descent—No such power in subject.* In British India the Crown has power to grant or transfer lands, and by its grant or on the transfer, to limit in any way the descent of such lands. But a subject has no right to impose upon lands or other property any limitation of descent which is at variance with the ordinary law of descent applicable to the particular lands or property so dealt with. The present appeal related to a taluqa granted in 1861 by the Crown to a Hindu, the grant containing a condition that "in the event of your dying intestate or of your successor dying intestate, the estate should descend to the nearest male heir according to the rule of primogeniture." On the death of one of the holders of the taluqa a suit was brought, which in 1905 came on appeal to the Privy Council for decision as to the succession to the deceased taluqdar's estate, and an Order in Council was made which declared that "the taluqa as constituted at the date of the sanad with accretions (if any) or properties (if any) appurtenant to the taluqa" passed to the appellant as the next male heir according to the rule of primogeniture; but that the residue of the property passed to the respondent, and the suit was remitted to India for determination under the Order in Council. There was no allegation of any family custom of primogeniture. On appeal from the final decrees of the Judicial Commissioner: *Held*, that under the Order in Council villages substituted by the Government for some of those held under the sanad, and a house granted by the Government after 1861 to the taluqdar, for his use as taluqdar, passed to the appellant as taluqdari property; but that villages purchased after 1861 by the deceased taluqdar passed to the respondent as non-taluqdari property, and it was immaterial whether it was or was not the intention of the deceased taluqdar to incorporate them with the taluqa. RAJINDRA BAHADUR SINGH v. RAGHUBANS KUNWAR (1918) . **I. L. R. 40 All. 470**

HINDU LAW—INHERITANCE—*concld.*

3. ——— *Exclusion of unchaste female from inheritance.* The rule as it obtains in the Bengal School of Hindu Law is that any female who was unchaste before the sucession opened out is excluded from the inheritance. RAJABALA DASI *v.* SHAYAMA CHARAN BANERJEE (1917) . . . **22 C. W. N. 566**

4. ——— *Inheritance—Illegitimate son—Right of putative father to succeed as heir. Held* by the Full Bench:—Where an illegitimate son, who if he had survived his putative father, would have inherited his estate either alone or along with others, dies leaving no issue, widow or mother, his putative father is entitled to succeed as his heir. *Jogendro Bhupati Hurrochundra Mahapatru* v. *Nityanand Man Sing, I. L. R. 18 Calc. 151,* and *Sadu* v. *Baiza and Genu, I. L. R. 4 Bom. 37,* applied. SUBRAMANIA AYYAR *v.* RATHNAVELU CHETTY (1917) . . . **I. L. R. 41 Mad. 44**

HINDU LAW—JOINT FAMILY.

1. ——— *Mitakshara law—Managing member, blending accounts of self-acquired property and joint property—Mutual exchanges on "deorh" partition of joint property for self-acquired property—Deeds of gift of joint ancestral property set aside.* Three brothers were members of a Mitakshara joint family, *D* being the managing member and guardian of *K* who was a minor. The family property consisted partly of joint property, and partly of property which came to them from the estate of a deceased brother. Only one account book was kept for the joint shares of the latter property, and that system of book-keeping which began in October, 1878, was continued till February, 1880, when *K* came of age. No separate book was thereafter kept by or for *D* in respect of the property which had come to them from their brother's estate; but there was one account for all *D's* receipts from all sources whether it was income from the joint family property, or from that which had been acquired from the brother's estate or any other sort of revenue, and similarly for all his expenditure of whatsoever kind. Further, on "a deorh" partition, that is, an actual partition of the several properties constituting their estates, mutual exchanges were made whereby *D* gave up his share in some ancestral family property for the share of *K* in the property acquired from the brother's estate. In a suit by *D's* son and grandsons (the appellants) after the death of *D* to set aside deeds of gift made by *D* in favour of the respondents, on the ground that they had been made out of the joint ancestral property, and were therefore invalid. *Held* (reversing the decision of the High Court), that the property coming from the brother's estate to the members of the family as collateral heirs was self-acquired property; that by blending that property with the joint property in the accounts, and by the mutual exchanges made on the partition, *D* had thrown it into the common stock, and thereby converted it into ancestral family estate. All the properties purporting to be conveyed to the respondents by the deeds of gift were joint family properties over which *D* had no power of disposition, and the appellants were entitled to recover them. *Suraj Narain* v. *Ratan Lal, I. L. R. 40 All. 159; L. R. 44 I. A. 201,* followed. RADHAKANT LAL *v.* NAZMA BEGUM (1917) . **I. L. R. 45 Calc. 733**

2. ——— *Mitakshara Law—Gains obtained in business by member who had received an ordinary education at expense of the joint family—Gains of science or learning—Gains obtained by skill, mental ability and individual effort.* There is no authority in the Mitakshara for the contention that the gains made personally, and without the aid of the joint funds, by a member of a joint family who received an ordinary education suitable to his position as a member of the family to which he belonged, should in law be regarded as partible, and not as his self-acquired property. The author of the Mitakshara must have been writing of education—"learning"—such as he knew it to be; and when he laid down that the gains obtained by one of the members of a joint family from an education received at the family expense should be partible, he could not have intended that such gains should include gains which were the result, not of the education received at the expense of the joint family but of the peculiar skill, mental abilities and individual effort, in applying and improving such education, exercised by the member who had been so educated. The question of whether a member of a joint family carried on his business personally for his own personal benefit without detriment to the joint family funds, or carried on such business as a member of the joint family, for the benefit of the joint family, is a question of fact to be determined on the evidence. METHARAM RAMRAKHIOMAL *v.* REWACHAND RAMRAKHIOMAL (1917) . . . **I. L. R. 45 Calc. 666**

3. ——— *Impartible zemindari—Right of junior members of family to maintenance—Custom of impartibility—No co-parcenary in impartible estate—Exceptions are subjects of special texts in Mitakshara—Custom or usage brought so repeatedly before the Courts as to be recognized becoming law without necessity of proof.* In the absence of special custom the grandsons of a deceased zemindar are not entitled to maintenance out of he impartible estate in the hands of his successor. This follows from the fact that in an impartible zemindari there is no co-parcenary. *Sartaj Kuari* v. *Deoraj Kuari, I. L. R. 10 All. 272; L. R. 15 I. A. 15;* and *Venkata Surya Mahipati Rama Krishna Rao* v. *Court of Wards, I. L. R. 22 Mad. 393; L. R. 26 I. A. 83,* followed. *Bachoo* v. *Mankorebai, I. L. R. 29 Bom. 51, 58,* approved. The view taken in the Madras Courts prior to the cases above cited that there was joint property in an impartible zemindari which only fell short of co-parcenary because by custom there was no right to partition is no longer tenable. The right of sons to maintenance in an impartible zemindari had been so often recognized that it is not necessary in each case to prove a custom. There are other persons entitled to maintenance either by reason of their exclusion from the succession owing to personal disqualification or by reason of personal relationship to one of the line of zemindars, but the latter class does not include grandsons. *Yarlagadda Malikarjuna Prasada Nayudu* v. *Yarlagadda Durga Prasada Nayudu, I L. R. 24 Mad. 147, (155); L. R. 27 I. A. 151, 157* and *Nilmony Singh Deo* v. *Hingoo Lall Singh Deo, I. L. R. 5 Calc. 256, 259,* approved. In the present case no special custom had been proved or even alleged; and the claim was not based on personal relationship. RAMA RAO *v.* RAJAH OF PITTAPUR (1918).

I. L. R. 41 Mad. 778.

4. ——— *Joint Hindu family—Partition in ignorance of rights by the widows of the family—Gift by one widow with the consent of*

HINDU LAW—JOINT FAMILY—*contd.*

the widow of the last male holder—Suit by the latter to recall gift for breach of conditions—Subsequent suit by reversioner to recover possession of the property gifted away—Whether the suit barred by res judicata—Widow's power of representation, extent of—Adverse possession—The Indian Limitation Act (IX of 1908), Sch. I, Arts. 141, 142, 144. Three brothers *S*, *P* and *M* constituted a joint Hindu family. *M* survived *S* and *P* and died in the year 1878. Each of the brothers left a widow. The widows of *S* and *P* persuaded *V*, the widow of *M*, to make a partition of the entire property as though each widow were entitled of her own right to one-third. This having been done, in the year 1880, the widow of *S* acting as the agent of *V* and with her consent made a gift of the property in suit to the defendants. The widow of *P* was also joined in that gift. In 1904, *V* brought a suit to recover property gifted away alleging that she had consented to and approved of the gift upon certain conditions which were not complied with by the donees. The defendants resisted the suit on the ground that they were not donees of *V*, that they had received the property from the widow of *S* and held it adversely to *V* and to any estate she represented. The suit was dismissed as barred by limitation. In 1911 *V* died and a suit was instituted by the plaintiff, her daughter, as heir and reversioner of the estate of her father *M*. A question having arisen whether the suit was barred by *res judicata*. *Held*, that the suit was not barred by *res judicata* as *V* did not fully represent the estate in her suit of 1904. The decision in that suit was not *inter parties* nor was it a decision *in rem* and moreover the ground of *V's* claim in that suit had nothing in common with the plaintiff's suit. The plaintiff also claimed not through *V* but in her own right as the reversioner of her father *M*. *Katama Natchiar* v. *The Rajah of Shivagunga, 9 Moo. I. A. 539*, discussed. During the continuance of a widow's life estate, adverse possession which begins in and runs its course before that life estate terminates, will be no bar to reversioners. Nor will litigation by the widow in the enjoyment of such a life estate, whether she be plaintiff or defendant, represent the estate fully so as to give rise to a bar of *res judicata* against reversioners if such litigation is qualified and personal to the widow or has arisen out of acts of her own affecting the estate during her own life estate therein. SUBBI *v.* RAMKRISHNABHATTA (1917).

I. L. R. 42 Bom. 69

5. ——————— *Mitakshara —Managing member keeping accounts of joint funds and of his own self-acquired property in same account book—Entries in such book evidence of intention to make self-acquired property joint—Purchases made in name of son-in-law out of funds so blended to provide for son-in-law—Statement to that effect made by manager admissible as being against his own interest—Benami deeds—Civil Procedure Code (1882), s. 317.* With respect to a Hindu joint family the law is that while it is possible that a member of the joint family can make separate acquisitions, and keep moneys and property so acquired as his separate property, yet the question whether he has done so is to be judged by all the circumstances of the case. Where a member of a joint Hindu family at Lucknow, who had made considerable savings from his earnings as a pleader at Hardoi, where he was entrusted with the management of the joint family property

HINDU LAW—JOINT FAMILY—*concld.*

at that place, eventually became managing member of the joint family at Lucknow, kept the accounts of the joint property and of his own separate earnings in one account book and had purchased properties in the name of his son-in-law out of the sums entered in the account book. *Held*, that by so blending his private savings with receipts and payments on joint account, he showed an intention to make them joint property, and they must be presumed to be joint. But it did not follow that all purchases entered in the book were made for the joint family. As regarded, the purchases in the name of his son-in-law, his statement that they were made to provide for the son-in-law was a statement against his own interest and therefore was admissible in evidence. Such a statement together with the other evidence in the case was sufficient to give the son-in-law a title to the subject of such purchases as against the claim of the joint family. SURAJ NARAIN *v.* RATAN LAL (1917) . . . **I. L. R. 40 All. 159**

HINDU LAW—LEPROSY.

——————— *Development of leprosy not a disqualification as regards capacity to deal with property.* There is no principle of Hindu Law under which a person who contracts the disease of leprosy is thereby disqualified from dealing with his own property or from dealing with joint family property so as to bind his sons, provided the alienation is made for legal necessity. MAN SINGH *v.* MUSAMMAT GAINI (1917) . **I. L. R. 40 All. 77**

HINDU LAW—MORTGAGE.

——————— *Mortgage by Hindu widow and then next reversioner and decree against both, if binds actual reversioner—Right of latter to attack decree on ground of fraud. Per* MOOKERJEE, *J.* When a mortgagee from a Hindu widow seeks to obtain a decree which would bind not merely the qualified interest of the widow, but the entire inheritance itself, the then next reversioner is a proper party to the suit. A remote reversioner is not a necessary party in such a suit. A reversioner so impleaded may well be deemed a party in a representative capacity and a decree fairly made in his presence, so long as it stands, binds the inheritance, whether he or some one else ultimately becomes the actual reversioner when the succession opens out on the death of the widow. But the fact only that the parties to the mortgage-deed (where it included the presumptive reversioner) had gone through the form of a suit and a decree cannot preclude the actual reversioner from attacking the decree on the ground of fraud; though the title of the purchaser in such a case can be defeated by the actual reversioner only after the decree has been successfully impeached for fraud collusion or other like reason. *Held, per* Curiam, that the decree in this case in which both the widow and then next reversioner were defendants must be taken to bind the whole estate. GANGA NARAIN DUTT *v.* INDRA NARAIN SHAHA (1916) . . . . . **22 C. W. N. 350**

HINDU LAW—PARTITION.

1. ——————— *Suit for Partition on behalf of minor—Death of minor before the filing of written statement—Severance of the joint status, if effected—Legal representative of minor, right of, to continue the suit.* The rule that the institution of a suit for partition of joint family property effects a

HINDU LAW—PARTITION—*contd.*

severance of the joint status is not applicable to a suit instituted on behalf of a minor; for in such a suit it is for the Court to determine whether a decree for partition will be beneficial to the minor. Where a minor plaintiff dies during the pendency of the suit his legal representatives are not entitled to continue the suit. *Girja Bai* v. *Sadashiv Dhundiraj, I. L. R. 43 Calc. 1031; Sundara Rajan* v. *Arunachalam Chetti, I. L. R. 39 Mad. 159*, referred to. CHELIMI CHETTY *v.* SUBBAMMA (1917).

I. L. R. 41 Mad. 442

2. ——— *Joint Hindu family—Partition—Agreement for partition of property of their husbands executed by two Hindu widows—Circumstances invalidating such agreement.* Two brothers, constituting a joint Hindu family, died within a year of each other, each leaving a widow surviving him. The two widows executed a deed of partition of the property of their husbands, in which it was recited that the husbands had died on certain dates; that they had been joint "in food, business and everything," but also, nevertheless, that the executants "became the owners of the property left by their husbands in equal shares." The property was never physically divided, and some time later the widows brought two suits— the one asking for actual partition according to the deed, and the other (the widow of the brother who died last) for possession of the whole estate. *Held*, that the latter was entitled to succeed. Either the gratuitous alienation by her of one half of the property to which she was entitled was the result of deception practised upon her by some one better acquainted with the facts, or else both parties to the deed of partition were under a common mistake regarding their respective rights. LACHMI KUNWAR *v.* DURGA KUNWAR (1918).

I. L. R. 40 All. 619

3. ——— *Preliminary decree—Mother's share determined—Decree for plaintiff for his share—Mother's death before the final decree—No actual division by metes and bounds—Mother's share forming an integral part of the estate available for division—Application to amend the decree for increase of share—Whether a separate suit necessary—Civil Procedure Code (Act V of 1908), O. XXII, r. 5.* One *B* died leaving a widow *Y*, a son *R*, and a grandson *A*. *A* brought a suit for partition and possession of his one-half share in *B's* estate, joining *Y* and *R* as defendants. A preliminary decree was passed holding that *Y* was entitled to one-third share and decreeing to the plaintiff a third share in the estate. Before any final decree could be passed, however, *Y* died and an application was made by *A* praying that owing to the removal of *Y* by death, his share should be held to have increased to one moiety and the decree should be amended accordingly. The Subordinate Judge granted the application. On appeal to the High Court, it was contended: (1) that the share assigned to *Y* became her *stridhan* and went to her special heirs and (2) that the remedy sought by the plaintiff could only be obtained by a separate suit and not by an application in the same suit. *Held*, (i) that until the actual partition was effected no share in *B's* estate passed to the ownership of *Y* and therefore the share assigned to her remained an integral part of the estate available for division among the heirs of her husband. *Sheo Dayal Tewaree* v. *Judoonath Tewaree, 9 W. R. 61, Debi Mangal Prasad Singh* v. *Mahadeo Prasad Singh, I. L. R. 34 All. 234*, followed. (ii) That there was

HINDU LAW—PARTITION—*concld.*

no necessity to bring a separate suit as when *Y* died the cause of action survived and her heirs had to be brought on the record; the Court was bound under O. XXII, r. 5 of the Civil Procedure Code, 1908, to make inquiry as to who those heirs were in case any dispute arose upon the subject. RAOJI BHIKAJI *v.* ANANT LAXMAN (1918).

I. L. R. 42 Bom. 535

4. ——— *Right of a third party to half of the property partitioned subsequently established by suit—Right of original parties to re-partition.* One of two brothers sued the other for partition of what they alleged to be the joint family property. The suit was compromised, and a partition was effected which was embodied in a decree. Subsequently, however, a cousin of the parties established by suit his title to one half of the family property which had been already divided between the two brothers. *Held*, that it was open to the two brothers—if not *eo nomine* to re-open the partition already effected—at any rate to ask the Court to adjust as between them the loss occasioned by the success of their cousin's suit. *Maraati* v. *Rama, I. L. R. 21 Bom. 333*, referred to. GANESHI LAL *v.* BABU LAL (1918).

I. L. R. 40 All. 374

HINDU LAW—RELIGIOUS OFFICE.

——— *Religious office and emoluments—Hindu females, right of, to inherit. Held* by the Full Bench (SADASIVA AYYAR, *J.*, *dissenting*), that according to the practice and precedents obtaining in the Madras Presidency, a Hindu female is not incompetent by reason of her sex to succeed to the office of archaka in a temple and to the emoluments attached thereto. *Sundarambal Ammal* v. *Yogavana Gurukkal, I. L. R. 38 Mad. 850*, overruled. *Mohan Lalji* v. *Gordhan Lalji Maharaj, I. L. R. 35 All. 283*, distinguished. ANNAYA TANTRI *v.* AMMAKKA HENGSU (1918).

I. L. R. 41 Mad. 886

HINDU LAW—REVERSIONERS—

1. ——— *Rights of reversioner—Suit to recover property of grandfather alienated during infancy of next reversioner to agnates of deceased—Compromise by female owner and her husband—Award in terms of compromise—Award made decree of Court under Act VIII of 1859, s. 327—Limitation Act, 1877, Sch. II, Arts. 95, 141—Guardian of minor.* A Hindu reversioner has no right or interest *in præsenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign, or to relinquish, or even to transmit to his heirs. His right becomes concrete only on her demise; until then it is a mere "*spes successionis*." His guardian, if he happens to be a minor, cannot bargain with it on his behalf, or bind him by any contractual engagement in respect thereto. On the death without issue of a Hindu governed by the Mitakshara law, and admittedly separated from his agnatic relations (respondents) leaving a widow, a daughter *K*, and his daughter's son, a minor (appellant), the widow though opposed by the agnates obtained possession of her husband's property for her life estate. On her death in 1864, a dispute arose with the agnates as to *K's* right to succeed, in which her husband *R* took part as representing *K*, though there was nothing to show that he had any authority to act as her agent. The matter was referred to arbitration, but before the

HINDU LAW—REVERSIONERS—*contd.*

arbitrators had taken any action a compromise was come to in which *R* purported to act for *K* and her infant son, the effect of which was to completely extinguish the reversionary interest of the appellant in his grandfather's estate. The arbitrators made an award in accordance with the terms of the compromise. It was not shown that the proceedings before the arbitrators ever came to the knowledge of *K*, but it appeared that she did not acquiesce in the award and the agnates had to apply to have it made a decree of Court under s. 327 of Act VIII of 1859, the then Code of Civil Procedure; and notwithstanding *K's* continued opposition such a decree was made and enforced, and the respondents were put into possession of the properties in 1865. *K* died in 1905, and in 1908 the appellant brought a suit to set aside the arbitration proceedings together with the compromise and award as being fraudulent and taken and entered into without knowledge or authority of *K*, and for a declaration that he was not bound by them. *Held* (reversing the decision of the High Court), that until *K's* death the appellant had no right or interest in the properties which could be the subject of bargain: *R's* action in referring to arbitration any matter connected with the appellant's reversionary right was, therefore, null and void. The award was based on the compromise, and even if the appellant had had an existing right, *R* would have had no power to enter into an arrangement which extinguished his interest practically without consideration. The compromise too was not for the benefit of the minor. The decree enforcing the award was based on the finding that *K* had, by her husband *R*, acquiesced in the reference to arbitration, and that she had consented to the compromise, and was therefore bound by the award: the order of the District Judge which was affirmed by the High Court affected *K's* interest and hers only. The minor was not a party to the appeal to the High Court, and the Civil Courts did not in any way purport to deal with or adjudicate upon his reversionary right. The proceedings therefore culminating in the decree by which the appellant was sought to be bound, were entirely devoid of the conditions on which alone a reversioner can be shut out from the assertion of his right which comes to him altogether independently of the female owner. *Katama Natchiar* v. *Rajah of Shivagunga, 9 Moo. I. A. 539*, distinguished. AMRIT NARAYAN SINGH *v.* GAYA SINGH (1917) . . . **I. L. R. 45 Calc. 590**

2. ——— *Reversioners —Compromise of disputes between the widow of the last male owner who took the whole estate of a Hindu joint family by survivorship and other widows of family entitled only to maintenance and person who claimed to have been adopted by one of the widows—division of the property between them—Claims inducing widow of sole male owner to agree to take less than she is entitled to and alter her position to her detriment—Future claim by alleged adopted son for possession of whole estate—Estoppel of claim as reversioner by compromise proceedings.* At the time of his death in 1883 *B*, one of three brothers, was by survivorship the sole owner of the estate of a Hindu joint family, and his widow became entitled to that estate for life. Her title was, however, disputed by the present appellant and by *P* and *K*, the widows of the predeceased brothers of *B*. The appellant set up a claim to the entire family estate based on the allegation that he had been adopted by *P* to her deceased husband, and was entitled as such adopted son to the whole property. *P* supported his claim, and together with *K* alleged that the three brothers had separated and that their three widows were each entitled to a one-third share of the estate. To protect her own interests and those of her daughter, the widow of *B* brought two suits; one of the 20th of January, 1891, against the appellant and *P* for a declaration that the appellant's alleged adoption was null and void. That suit was dismissed on a technical ground, and an appeal against the decree dismissing it was preferred to the High Court at Allahabad. The other suit was brought on the 4th of February 1892, against *P* and *K* claiming a declaration that *B*, her late husband, had been the sole owner and possessor of the entire family property, that on his death she was herself in possession of and entitled to that property according to Hindu law, and that *P* and *K* had no rights in it except to maintenance. Before the second suit came on for hearing, *B's* widow, her daughter, *P*, *K*, and the appellant had, on the 1st of August 1892, entered into a compromise referring their disputes to arbitration, the result of which was that *B's* widow, her daughter, *P* and *K*, each obtained possession of a one-fourth share of the property in dispute. The appellant, though allotted no share of the family property, obtained the share allotted to his adoptive mother *P*, who relinquished it to him by executing a deed on the 22nd of August 1898, in his favour. In the award it was stated that the appellant had been adopted by *P*, but that he had nothing to do as such adopted son with the shares allotted to the other ladies. He obtained in accordance with *P's* deed of relinquishment mutation of names in his favour. The appeal in *B's* widow's first suit was not supported and was dismissed, and the second suit was withdrawn. In suits filed respectively on the 15th of July 1912, and the 28th of August 1913, by the appellant for possession, as reversioner to the estate of *B*, of the properties allotted in January 1893, to *B's* widow, her daughter, and *K* respectively: *Held* (affirming the decision of the High Court), that the appellant was precluded from claiming as a reversioner by his having been a party to the compromise entered into in 1892, which, and the awards made in accordance with it, were binding on him. He had at that time no right of any kind to any share of the property of the family: at best he had the mere expectancy of being reversioner on the death of *B's* widow. *Sumsuddin Goolam Husein* v. *Abdul Husein Kalimuddin, I. L. R. 31 Bom. 165*, distinguished. The claim of the appellant influenced *B's* widow, who was induced mainly by that claim, but also by the claim of *P* and *K*, to consent to a division of the family property in which she only obtained a one-fourth share. By those claims she was induced to agree to a compromise against her own interests and those of her daughter and to alter her position greatly to her own detriment. The appellant was a party to it, and under it he obtained a substantial benefit which he has ever since enjoyed. He was consequently bound by the compromise, and could not now claim as a reversioner. KANHAI LAL *v.* BRIJ LAL (1918) . . . **I. L. R. 40 All. 487**

3. ——— *Reversioners, consent of.* The consent given by the reversioners would certainly raise a presumption of the existence of legal necessity. SHYAMPEARY DASYA *v.* EASTERN MORTGAGE CO. (1917). **22 C. W. N. 226**

HINDU LAW—STRIDHAN.

——————— *Ajautuka stridhan, succe sion to—Son or married daughter—Property whether jautuka or ajautuka—Onus.* The commonly accepted view of the succession of *ajautuka* property of a Dayabhaga Hindu woman is that the sons and the maiden daughters are entitled to it in equal shares, but the married daughters are postponed to the sons. DELANNEY *v.* PRAN HARI GUHA (1918) . . . . **22 C. W. N. 990**

HINDU LAW—SUCCESSION.

——————— *Succes s i o n—H i n d u widow—Unchastity in husband's lifetime—Condonation by husband.* Under the Hindu law, a widow is not debarred from inheriting to her husband on the ground that she had become unchaste in her husband's lifetime, if the husband had condoned her unchastity. *Gangadhar Parappa Alur* v. *Yellu kom Viraswami Shirawale, I. L. R. 36 Bom. 138,* followed. *Muturginee Dabee* v. *Joykallee Dabee, 14 W. R. A. O. J. 23,* and *Moniram Kolita* v. *Keri Kolitani. I. L. R. 5 Calc. 776,* referred to. RADHE LAL *v.* BHAWANI RAM (1917).

I. L. R. 40 All. 178

HINDU LAW—SURETY.

——————— *Surety—Son's liability —Kinds of sureties—Surety for appearance, assurance and payment, meaning of—Tests of Yajnavalkya, construction of—Debt contracted prior to surety-bond—Effect on son's liability.* Where a Hindu executed a surety-bond stating that he would make the debtor pay within two months the amount due on a promissory note already executed by the latter and that, in default of payment by the debtor, he would pay: *Held,* that the surety was one for payment; that the sons of the surety were liable under Hindu law for the payment and that it made no difference that the money had already been lent to the creditor before the surety-bond was executed. Suretyship, according to the texts of Yajnavalkya, is of three kinds, *viz.,* for appearance, for assurance and for payment: in the last case the surety's sons are also liable to pay his surety-debts. According to the Mitakshara commentary, the suretyship by way of assurance consists of a general warranty of credit, but a surety for payment is one who says, "If he does not pay, then I myself will pay." *Tukaram Bhat* v. *Gangaram, I. L. R. 23 Bom. 454; Rasik Lal Mandal* v. *Singheswar Rai, I. L. R. 39 Calc. 843,* referred to. THANGATHAMMAL *v.* ARUNACHALAM CHETTIAR (1918).

I. L. R. 41 Mad. 1071

HINDU LAW—WIDOW.

1. ——————— *M i t a k s h a r a —Joint Hindu family—Hindu widow—Widow's right of residence in joint family house—Effect of alienation during the lifetime of widow's husband.* When a right of residence or maintenance comes into existence in favour of the widow of a man who was lately a member of a joint Hindu family, she takes that right in the property as it stands at the time of her husband's death. She cannot set up her right of maintenance or residence as against alienations effected during the lifetime of her husband. *Ajudhia Prasad* v. *Jasoda, 1887, All. Weekly Notes, 279,* followed. A widowed daughter-in-law is debarred from setting up the plea of the invalidity of an alienation effected by the father-in-law during her husband's lifetime. *Sohni* v. *Mohan Kuer, 9 A. L. J. 23,* followed. RAMZAN *v.* RAM DAIYA (1917) . . **I. L. R. 40 All. 96**

HINDU LAW—WIDOW—*concld.*

2. ——————— *Hindu widow—Gift—Suit to contest alienation made by widow—Plaintiff not nearest reversioner.* In order that a reversioner may be able to maintain a suit to contest an alienation, made by a Hindu widow, of her husband's property he must either be the next presumptive reversioner or he must show that the nearer reversioners are colluding with the widow. *Rani Anand Kunwar* v. *The Court of Wards, I. L. R. 6 Calc. 764,* and *Meghu Rai* v. *Ram Khelawan Rai, I. L. R. 35 All. 376,* followed. *Raja Dei* v. *Umed Singh, I. L. R. 34 All. 207,* distinguished. GUMANAN *v.* JAHANGIRA (1918).

I. L. R. 40 All. 518

HINDU LAW—WIDOW'S ESTATE.

——————— *Widow's estate—Alienation by widow with consent of reversioner of part of estate—Effect—Presumption of necessity when defeated—Several limited owners, arrangement between, how long effective—Alienation of her separated share for legal necessity—Legal necessity, if to be determined with reference to whole estate or the share.* The Full Bench in *Debi Prashad Chowdhuri* v. *Golap Bhagat, I. L. R. 40 Calc. 721; 17 C. W. N. 701,* has decided that the doctrine of relinquishment and acceleration cannot apply to partial transfers by a limited owner, which can be supported only by legal necessity. The consent of the next reversioner is merely strong presumptive evidence of the necessity. The propriety of an alienation with the consent of the next reversioner may come in question not only with reference to the conduct of the widow, whether or not she was justified by necessity, but also with reference to the conduct of the next reversioner, whether or not his conduct was honest. If, in the absence of legal necessity, he engineered the transaction to suit his own ends and for his own immediate gain, his consent would lose all its virtue. The transaction would stand no higher than a partial alienation in his favour and would have to be judged from that standpoint. Nevertheless, whatever might be said of the conduct of the widow or the next reversioner, the transferee, if he made due enquiry and acted *bonâ fide,* would still be entitled to the benefit of the equitable rule laid down by the Privy Council in *Huncomanpershad* v. *Babooee Munraj, 6 Moo. I. A. 393,* and now enacted in s. 38 of the Transfer of Property Act. Nor would the antecedent mismanagement of the estate affect him unless he was in some way a contributory party thereto. If two widows or two daughters taking jointly the estate of their deceased husband or father make an arrangement for separate possession and enjoyment, the arrangement will not ordinarily deprive the survivor of the right to the whole estate or enable the ladies to confer a title on a third party which will not terminate at the latest with the life of that survivor. The propriety of an alienation by one of several limited owners of a portion of the property in her separate possession should be determined with reference to the estate as a whole and not with reference to the separated portion in her possession. SHYAMA DAS ROY CHOWDHURY *v.* RADHIKA PROSAD CHATTARJI (1918) . . . . . **22 C. W. N. 846**

HINDU WIDOW.

See HINDU LAW—BOND.

I. L. R. 40 All. 17

HINDU WIDOW—*concld.*

See HINDU LAW—REVERSIONERS.
I. L. R. 40 All. 487, 518

See HINDU LAW—WIDOW.
I. L. R. 40 All. 96

See HINDU LAW—WIDOW.
I. L. R. 40 All. 178

See REGISTRATION ACT (XVI OF 1908), S. 17 . . **I. L. R. 40 All. 384**

——— *Alienation by widow without necessity—Acceleration of widow's interest in favour of one of the next reversioners—Consent of all reversioners necessary.* A Hindu widow who had two daughters made a gift of the whole of her husband's property to one of them without the consent of the other. Afterwards she adopted the plaintiff. The plaintiff having sued to recover the property: *Held,* that the plaintiff was entitled to recover the property, inasmuch as the surrender of the entire estate of the widow in favour of one of the two persons constituting the next reversion without the consent of the other was not ali . DODBASAPPA RAMLINGAPPA *v.* BASAWANEPPA (1918) . . . **I. L. R. 42 Bom. 719**

HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856).

——— s. 2—

See HINDU LAW, CONVERSION OF A HINDU WIDOW . . **I. L. R. 41 Mad. 1078**

HOROSCOPE.

See EVIDENCE . **L. R. 45 I. A. 284**

HOUSE AND TOWN PLANNING ACT, 1909 (9 EDW. VII, c. 44), s. 58 (3).

See RECOUPMENT.
I. L. R. 45 Calc. 343

HUNDIS.

——— insufficiently stamped—

See EXECUTOR . **I. L. R. 45 Calc. 538**

HYDERABAD STATE.

See PROMISSORY NOTE.
I. L. R. 42 Bom. 522

HYPOTHECATION.

——— of movable property—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 120 . . **I. L. R. 40 All. 512**

I

IDENTITY.

See PARTIES . **I. L. R. 45 Calc. 159**

ILLEGAL CESS.

——— *Abwab—Suit for arrears of rent—Consideration for grant of patni—Stipulation in kabuliat to pay sum as mamuli for the idol Isswar Thakur—Recovery of Rents Act (Ben. X of 1859), s. 10—Regulation VIII of 1793, ss. 52, 54—Regulation V of 1812, s. 3.* In a suit to recover Rs. 3,330-4-0 as arrears of *patni* rent, the defendants pleaded that Rs. 15 had been claimed in excess and that this sum was in the nature of an *abwab* and not recoverable. The *kabuliyat* on which this suit was based provided that an annual rent of

ILLEGAL CESS—*concld.*

Rs. 3,315-4-0 should be paid by 12 monthly instalments. In a subsequent clause it stipulated that in the month of *Bhadra* every year a further sum of Rs. 15 should be paid as *mamuli* for the *Isswar Thakur* at the lessor's house and then went on to state that if the lessee failed to pay the said sum of Rs. 15 amicably, the lessor should deduct the same from the money remitted by the lessee as rent, or sue for the amount along with or separately from the arrears of rent, and the lessee would not take objections thereto. *Held,* that the sum of Rs. 15 was not intended by the parties to be part of the consideration for the use and occupation of the land or as part of the rent. It did not form part of the rent, nor was it treated as part of the rent and was not recoverable. *Held,* also, that s. 3 of Regulation V of 1812 referred only to the amount which was by the contract fixed as the rent payable to the landlord. *Per* SANDERSON, *C. J.* The rule which has been followed in this Court is, that each case must depend upon the proper construction of the contract before the Court and, if upon a fair interpretation of the contract it can be seen that a particular sum is specified in the contract, or agreed to be paid as the lawful consideration for the use and occupation of the land, *i.e.*, if it is really part of the rent, although not described as such, the landlord can recover it. *Per* CHATTERJEA, *J.* It is only the rent, and not any other sum though not indefinite, and though agreed upon to be paid in the written engagement, which can be recovered. In determining whether an item does or does not form part of the rent, the fact that it has been stipulated to be paid separately from the rent, and also the fact that it is not included in the instalments of rent, have an important bearing on the question. *Upendra Lal Gupta* v. *Meheraj Bibi, 21 C. W. N. 108,* explained. BIJOY SINGHA DUDHURIA *v.* KRISHNA BEHARI BISWAS (1917).
I. L. R. 45 Calc. 259

IMMOVEABLES.

——— English mortgage of—

See ADMINISTRATION.
I. L. R. 45 Calc. 653

IMPOSSIBILITY OF PERFORMANCE.

See SALE OF GOODS.
I. L. R. 45 Calc. 28

IMPROVEMENT TRUSTEES.

See BOMBAY MUNICIPALITY.
L. R. 45 I. A. 233

INAM.

——— grant of, previous to British Rule—

See ESTATES LAND ACT (MAD. I OF 1908), S. 3 (2) (*d*) . **I. L. R. 41 Mad. 1012**

INAMDAR.

See KADIM INAMDAR.
I. L. R. 42 Bom. 112

INCOME-TAX ACT (II OF 1886).

——— ss. 4, 11, 12, 49, Sch. II, Part II—

See COMPANY . **I. L. R. 42 Bom. 579**

INCUMBRANCE.

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 756

INDEMNITY.

——— right to—

See EXECUTOR . **I. L. R. 45 Calc. 538**

INFERENCE.

——— from facts which are not evidence—

See EVIDENCE ACT (I OF 1872), S. 58. **I. L. R. 42 Bom. 352**

INHERITANCE.

See CUSTOM . **I. L. R. 45 Calc. 450**

See HINDU LAW—INHERITANCE. **I. L. R. 41 Mad. 44**

INJUNCTION.

See DECREE FOR INJUNCTION.

See CONTRACT ACT (IX OF 1872), S. 30. **I. L. R. 42 Bom. 676**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120, 144. **I. L. R. 42 Bom. 333**

——— *Temporary injunction in mandatory form—Power of Indian Courts to grant under O. XXXIX, r. 2, Civil Procedure Code (Act V of 1908).* Courts in India can, under O. XXXIX, r. 2, Civil Procedure Code, issue temporary injunctions in a mandatory form. *Israil* v. *Shamsee Rahman, I. L. R. 41 Calc. 436,* and *Champsey Bhimji & Co.* v. *Jamna Flour Mills & Co. 16 Bom. L. R. 566,* referred to. The view of BEAMAN, J., in *Rasul Karim* v. *Pirubhai Amirbhai, I. L. R. 38 Bom. 381,* not followed. KANDASWAMI v. SUBRAMANYA (1917) . **I. L. R. 41 Mad. 208**

INSOLVENCY.

See PROVINCIAL INSOLVENCY ACT (III OF 1907).

INSOLVENT.

——— *Insolvent, undischarged, suit by—Security for costs—Cause of action accruing after the order of adjudication—The amount claimed in excess of the debts proveable in insolvency—Intervention of the Official Assignee—Nominal plaintiff—Civil Procedure Code (Act V of 1908), s. 151.* An undischarged insolvent brought an action for the recovery of a sum due in respect of brokerage from the defendant and earned by him subsequent to his adjudication, the amount claimed being in excess of the amount of his debts proveable in insolvency. The defendant applied for an order that the plaintiff be directed to give security for the costs of the suit. *Held,* that the plaintiff was not a nominal plaintiff suing merely for the benefit of the Official Assignee and so no order for security for costs should be made. That the application is not covered by any provision in the Code of Civil Procedure, but that Code is not exhaustive and it must be dealt with under the general law. That it is well settled in English law that a cause of action which accrues to a bankrupt subsequent to the adjudication in respect of after acquired property, remains vested in him and does not vest in his Trustees in Bankruptcy and that he is the proper plaintiff to sue in respect thereof and that anything recovered by him remains in the Bankrupt until the Trustee intervenes and the same principles are applicable in this country. That it is also well-settled that a plaintiff will not be compelled to give security for costs merely because

INSOLVENT—*concld.*

he is a pauper or a bankrupt. MURRAY *v.* EAST BENGAL MAHAJAN FLOTILLA CO., LD. (1918). **22 C. W. N. 1018**

INSTALMENT DECREE.

See DECREE . **I. L. R. 42 Bom. 728**

——— *Penalty clause—Failure to pay two instalments making the whole decree payable at once—First instalment not paid on due date, but paid up before the second one fell due—Second instalment not paid on due date—Penalty clause not becoming operative.* A decree payable by instalments provided that the instalments were to be paid on certain fixed dates; and that on failure to pay any two instalments at the period fixed, the whole amount of the decree remaining unsatisfied was to be paid up at once. The first instalment was not paid on the date fixed, but was paid some time afterwards and before the second instalment fell due. On failure to pay the second instalment on the due date, the decree-holder applied for execution of the whole amount of the decree which remained unsatisfied. *Held,* dismissing the application, that the real intention of the parties was that before the penalty could be enforced two instalments must be in arrears together, whereas in the present case only one instalment was in arrears. SUBBAYA VENKAPPA *v.* SUBBAYA (1918). **I. L. R. 42 Bom. 304**

INTENT.

See PENAL CODE (ACT XLV OF 1860), S. 266 . . **I. L. R. 40 All. 84**

INTENTION.

See PENAL CODE (ACT XLV OF 1860), S. 302 . . **I. L. R. 40 All. 360**

See PENAL CODE (ACT XLV OF 1860), SS. 304 AND 325. **I. L. R. 40 All. 103**

INTEREST.

See C. I. F. CONTRACTS. **I. L. R. 42 Bom. 473**

See CIVIL PROCEDURE CODE (1908), O. XXIV, RR. 1, 2 AND 3. **I. L. R. 40 All. 125**

——— Interest not contracted for and not recoverable under the Interest Act (XXXII of 1839) allowed as damages. KHETRO MOHAN PODDAR *v.* NISHI KUMAR SAHA (1917). **22 C. W. N. 488**

INUNDATED LANDS.

See CUSTOM . **I. L. R. 45 Calc. 475**

J

JALKAR.

——— *Jalkar rights in river—Shifting of bed leaving sheets of water which become connected with the river only when there is inundation.* Certain *kopras* or sheets of water which once formed the bed of the river Mahananda are now surrounded by culturable lands within the plaintiff's *putni.* The river has moved many miles away, the *kopras* are completely isolated, and are no longer part of the river bed, and there is no connection of the *kopras* with the river except when the whole country is inundated by the flood water of another river. *Held,* that the defendant, who have *jalkar* rights in

JALKAR—*concld.*

the Mahananda have no right of fishery in the *kopras* which belong exclusively to the plaintiffs. SASI KANTA ACHARJEE *v.* KUNJA MOHAN MOITRA (1917) . . . . . 22 C. W. N. 63

JOINDER OF PARTIES.

See PARTIES, JOINDER OF. I. L. R. 42 Bom. 87

JOINT HINDU FAMILY.

See AGRA TENANCY ACT (II OF 1901), S. 20 . . I. L. R. 40 All. 314

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2 (*11*), 53. I. L. R. 42 Bom. 4

See HINDU LAW—ALIENATION. I. L. R. 40 All. 159, 171

See HINDU LAW—PARTITION. I. L. R. 40 All. 619

See HINDU LAW—WIDOW I. L. R. 40 All. 96

JOINT OWNER.

——— suit by, to recover rent—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH II, ART. 31. I. L. R. 40 All. 666

JOSHI.

See VATANDAR JOSHI. I. L. R. 42 Bom. 613

JUDGES.

——— prosecution by—

See CONTEMPT OF COURT. I. L. R. 45 Calc. 169

JUDGMENT.

See AMENDED LETTERS PATENT, CL. 15. I. L. R. 42 Bom. 260

See MISJOINDER I. L. R. 45 Calc. 111

——— Judgment of one Judge of High Court) read in Court by another when former on leave is valid. SARAJ RANJAN CHOUDHURY *v.* PREMCHAND CHOUDHURY (1917). 22 C. W. N. 263

JUDI.

——— payment of—

See CONTRACT ACT (IX OF 1872), S 69. I. L. R. 42 Bom. 93

JUDICIAL DISCRETION.

See COMMISSION AGENCY. I. L. R. 45 Calc. 138

JUDICIAL OPINION.

——— difference of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIII, R. 5. I. L. R. 41 Mad. 620

JURISDICTION.

See HIGH COURT, JURISDICTION OF.

See JURISDICTION OF INFERIOR COURT.

See JURISDICTION OF MAGISTRATES.

See PRESIDENCY MAGISTRATES, JURISDICTION OF.

See REVENUE COURT, JURISDICTION OF.

See APPEAL . . I. L. R. 45 Calc. 818

JURISDICTION—*contd.*

See ATTACHMENT BEFORE JUDGMENT. I. L. R. 45 Calc. 780

See CIVIL AND REVENUE COURTS. I. L. R. 40 All. 51, 646

See CIVIL PROCEDURE CODE (1908), S. 24. I. L. R. 40 All. 525

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 54 . I. L. R. 42 Bom. 689

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . I. L. R. 42 Bom. 742

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 . I. L. R. 42 Bom. 119

See COMPANY . I. L. R. 45 Calc. 486

See CONTEMPT OF COURT. I. L. R. 45 Calc. 169

See COURT FEE . I. L. R. 45 Calc. 634

See CRIMINAL PROCEDURE CODE, SS. 107, 125, 438 . . I. L. R. 40 All. 140

See CRIMINAL PROCEDURE CODE, S. 145. I. L. R. 40 All. 364

See CRIMINAL PROCEDURE CODE, S. 350. I. L. R. 40 All. 307

See CRIMINAL PROCEDURE CODE, SS. 439, 476 . . I. L. R. 40 All. 144

See CRIMINAL PROCEDURE CODE, S. 476. I. L. R. 40 All. 24

See CRIMINAL PROCEDURE CODE, SS. 476, 478 . . . I. L. R. 40 All. 116

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 520. I. L. R. 42 Bom. 664

See DECREE . I. L. R. 40 All. 579

See DIVORCE . I. L. R. 45 Calc. 525

See HIGH SEAS . I. L. R. 42 Bom. 234

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 85. I. L. R. 42 Bom. 49

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 181, 182. I. L. R. 42 Bom. 309

See PARTITION . I. L. R. 45 Calc. 873

See PENSIONS ACT (XXIII OF 1871), S. 4. I. L. R. 42 Bom. 257

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 38. I. L. R. 42 Bom. 80

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13. I. L. R. 40 All. 663

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 31. I. L. R. 40 All. 142, 666

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 38. I. L. R. 40 All. 52

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 41. I. L. R. 40 All. 135

See RENT . . I. L. R. 45 Calc. 769

See SANCTION FOR PROSECUTION. I. L. R. 45 Calc. 336

See STAMP ACT (II OF 1899), SS. 40, 57. I. L. R. 40 All. 128

JURISDICTION—*concld.*

———— **of Chief Presidency Magistrate**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 514.
I. L. R. 42 Bom. 400

———— *Execution proceedings—Suits above Rs. 5,000—Appeal from order in execution proceedings—Civil Courts Act (XII of 1887), s. 21, sub-s. (1)—Civil Procedure Code (Act V of 1908), ss. 99, 100, 108.* Where, in execution proceedings in a mortgage suit the value of which exceeded Rs. 5,000, an order was made by the Court of first instance which on appeal was modified by the District Judge: *Held*, that the order of the District Judge was made without jurisdiction and was contrary to law. In such a suit, an appeal against an order made in a proceeding arising out of the decree lay to the High Court and not to the Court of the District Judge under the provisions of s. 2, sub-s. (*1*) of the Bengal Civil Courts Act, 1887. *Held*, also, that as the order was passed on appeal by the District Judge, a second appeal lay to the High Court under s. 100 of the Civil Procedure Code, 1908. *Ranjit Misser* v. *Ramudar Singh, 16 C. L. J. 77*, referred to. BANDIRAM MOOKERJEE *v.* PURNA CHANDRA ROY (1917).
I. L. R. 45 Calc. 926

JURISDICTION OF HIGH COURT.

———— **in revision**—

See CIVIL PROCEDURE CODE (1908), S. 115
I. L. R. 40 All. 674

———— *Review of order made in criminal case—Criminal Procedure Code (Act V of 1898), ss. 438, 439—Enhancement of sentence by High Court on reference by District Magistrate without hearing accused—Review of order on application of accused.* On a reference under s. 438, Criminal Procedure Code, by the District Magistrate the Bench taking undefended criminal cases made an order enhancing the sentence. Subsequently, on the application of the accused the same Bench reviewed the said order, set it aside and referred the case to the regular Criminal Bench, holding that no order of enhancement could be made under s. 439, Criminal Procedure Code, without hearing the accused. KING-EMPEROR *v.* ROMESH CHANDRA GUPTA (1917) . . . **22 C. W. N. 168**

JURISDICTION OF INFERIOR COURT.

———— *Jurisdiction of Inferior Court to set aside decree of Superior Court obtained by fraud—Reliefs that can be granted.* A District Munsif can entertain a suit for a declaration that a decree passed by a District Court was obtained by fraud when the amount decreed and subject-matter of the suit are within his jurisdiction; but he cannot direct a retrial of the suit by the District Court. The previous suit can be revived only by an application to the District Court. ARUNACHELLAM *v.* SABAPATHY (1917).
I. L. R. 41 Mad. 213

JURISDICTION OF MAGISTRATES.

See BROTHEL . **I. L. R. 45 Calc. 301**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 107, 192, 528.
I. L. R. 41 Mad. 246

JURY.

———— **misdirection to**—

———— *Penal Code (Act XLV of 1860), s. 465—Forgery.* Where in a case under s. 465, Indian Penal Code, the charge against the accused was that by personating *M. B.* the husband of one *S*, he induced the Mahomedan Marriage Registrar to make an entry of the divorce of *S*, by her husband to which entry he affixed his thumb impression and the Sessions Judge charged the jury as follows: "If the person who put his thumb impression in the register as Mir Baksha was not really Mir Baksha, it is clear that he made a false document within the meaning of s. 364 and that his intention was that fraud should be committed. also that injury should be caused to Mir Baksha. He therefore committed forgery." *Held*, that the Sessions Judge misdirected the jury in not having left it to the jury to say whether on the evidence they found that the intention of the accused was dishonest or fraudulent. The High Court did not set aside the verdict holding that it was not erroneous in spite of the misdirection. EMPEROR *v.* NAIMADDI (1918) . . . **22 C. W. N. 572**

JURY—*concld.*

K

KABULIYAT.

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

———— **stipulation in**—

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

KACCHI ADAT.

See CONTRACT . **I. L. R. 42 Bom. 224**

KADIM INAMDAR.

———— *Grantee of soil—Introduction of summary settlement into the alienated village—Mirasdar holding lands in the village long before the alienation—Inamdar's right to enhance the rent—Bombay Land Revenue Code (Bombay Act V of 1879), s. 217.* A Kadim Inamdar who is a grantee not merely of the Government share of rent and land revenue but a grantee out and out of soil in a village where a survey settlement has been introduced, is entitled to enhance the rent of the Mirasdar whose tenancy dates from a time prior to the grant. PANDU *v.* RAMCHANDRA GANESH (1917) . . . . **I. L. R. 42 Bom. 112**

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), SS. 366, 368 . **I. L. R. 40 All. 507**

KIDNAPPING A GIRL OUT OF BRITISH INDIA.

See PENAL CODE (ACT XLV OF 1860). SS. 366, 360, 90.
I. L. R. 42 Bom. 391

KITTIMA ADOPTION.

See BURMESE BUDDHIST LAW.
I. L. R. 45 Calc. 1

KNOWLEDGE.

See PENAL CODE (ACT XLV OF 1860), S. 302 . . **I. L. R. 40 All. 860**

KONKANI MAHOMEDANS.

See CONTRACT . **I. L. R. 42 Bom. 499**

KULKARNI VATAN.

See PENSIONS ACT (XXIII OF 1871), s. 4.
I. L. R. 42 Bom. 257

KUZHIKANAM.

See CUSTOMARY LAW OF SOUTH KANARA.
I. L. R. 41 Mad. 118

L

LAKHERAJ LANDS.

——— *Presumption arising from possession—Omission of entry in Pargana register, Kanungo register, General and Mauzawar register, Thakbust map, evidentiary value of—Bengal Tenancy Act (VIII of 1885), ss. 103B, 106—Regulation XIX of 1793, ss. 22 to 25.* A purchased a putni taluk in 1899, and the Record of Rights was finally published in 1909, containing an entry to the effect that no rent was actually paid but that the occupant *B* was not entitled to hold without payment of rent. *B* instituted a suit under s. 106 of the Bengal Tenancy Act, for a declaration that the lands were his rent-free *brahmottar*, and that the entries in so far as they stated that the lands were liable to be assessed to rent were incorrect, and claimed continued possession without payment of rent or revenue since the date of the grant of the lands to his predecessors. A relied upon the omission of any entries as to the lands being *lakheraj* in the Pargana, Kanungo, General and Mauzawar registers and Thakbust maps and proceedings. *Held*, also, that the proved possession free from payment of rent was sufficient to rebut the presumption that the lands were liable to be assessed to rent. *Held*, further, that the omission from the Pargana, Kanungo, General and Mauzawar registers, and thakbust maps and statements, of any indication that the lands were *lakheraj*, was of no evidentiary value. *Held*, therefore, in the absence of proof of payment of rent at any time that the lands were *lakheraj* and no part of the *mal* assests of zemindari or putni. BIPRADAS PAL CHOWDHURY *v.* MANORAMA DEBI (1917).
I. L. R. 45 Calc. 574

LAMBARDAR AND CO-SHARER,

See AGRA TENANCY ACT (II OF 1901), ss. 164, 166 . **I. L. R. 40 All. 246**

LAND ACQUISITION.

See BOMBAY MUNICIPALITY.
L. R. 45 I. A. 125

LAND ACQUISITION ACT (I OF 1894).

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888, AS AMENDED BY BOM. ACT V OF 1905), ss. 296, 297, 299, 301 . **I. L. R. 42 Bom. 462**

——— **award, whether a decree—**

See LETTERS PATENT, CLS. 15, 36.
I. L. R. 41 Mad. 943

——— **s. 18**—*Reference to Court for valuation—Duty of Court to see whether the evidence displaces Collector's Award—Effect when evidence exaggerated and reckless.* Compensation payable for land acquired by Government cannot be ascertained with mathematical accuracy and the Court has to see whether the evidence adduced displaces the amount awarded by the Collector. The valuation of the Collector is not displaced by evidence of value given by the claimant which is so exaggerated and reckless that no reliance can be placed thereon. HIGGINS *v.* SECRETARY OF STATE FOR INDIA (1917).
22 C. W. N. 659

LAND ACQUISITION ACT (I OF 1894)—*concld.*

——— **s. 18**—*concld.*

——— **ss. 6, 9, 23 (*1*) (*4*), 24(*6*), 48—**

See RECOUPMENT.
I. L. R. 45 Calc. 343

——— **ss. 11, 12, 18, 31—**

See CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. ACT IV OF 1898), s. 48 (*11*) . **I. L. R. 42 Bom. 54**

——— **ss. 23, 49**—*Principles of assessment of compensation—Land forming part of compound of house, but actually in possession of tenants with occupancy rights.* The owner of a house with a compound attached to it let out a large part of the compound to agricultural tenants whom he allowed to acquire occupancy rights therein. *Held*, on a question arising as to the principle of assessing compensation for this portion under the Land Acquisition Act, 1894, that so far as the owner's interest was concerned, compensation was properly calculated at so many years' purchase of the annual profits actually received by the owner at the time of the sale. The owner could not, in the circumstances, be allowed to claim compensation as for a building site. *Bombay Improvement Trust* v. *Jalbhoy Ardeshir, I. L. R. 33 Bom. 483*, referred to. ORDE *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (1918) . . **I. L. R. 40 All. 367**

——— **ss. 53, 54—**

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904), ss. 10, 21.
I. L. R. 42 Bom. 100

LAND IMPROVEMENT LOANS ACT (XIX OF 1883).

——— **s. 7 (*1*) (*c*)**—*Sale under—Loan, a first charge on the land—Sale, free of prior encumbrances—Improvements effected before receipt of loan, effect of—Non-completion of improvements within time and extension of time, effect of, on further advance of loan—Proviso to a section, use of, to interpret the section.* A loan advanced under the Land Improvement Loans Act (XIX of 1883) is subject to proviso to s. 7 (*1*) a first charge on the land for the improvement of which the loan is advanced; hence a sale under s. 7 (*1*) (*c*) of the Act to recover the loan is free of prior encumbrances. Neither the fact that a portion of the improvement had been effected with the help of a private loan before the loan applied for was actually advanced, nor the fact that the Government relaxed the rigour of its rules and allowed the borrower an extension of time to utilize the first instalment of the loan before the second was disbursed makes the loan any the less a loan under the Act, if in effect the loan was utilized for the purpose for which it was borrowed. Though a proviso to a section cannot be used to extend its operation, yet in case of doubt or ambiguity as to the meaning of the substantive part of the section, the proviso can be looked to to ascertain its proper interpretation. *West Derby Union* v. *Metropolitan Life Assurance Society*, [*1897*] *A. C. 647*, followed. SANKARAN NAMBUDRIPAD *v.* RAMASWAMI AYYAR (1918).
I. L. R. 41 Mad. 691

LANDLORD.

——— interest of—

See SALE . . **I. L. R. 45 Calc. 294**

LANDLORD AND TENANT.

	COL.
1. ADVERSE POSSESSION . .	173
2. LEASE	173
3. NOTICE TO QUIT . . .	174
4. RENT	174
5. TITLE	175

See AGRA TENANCY ACT (II OF 1901), S. 34 . . **I. L. R. 40 All. 300**

See ESTATES LAND ACT (MAD. ACT I OF 1908), S. 40, CL. (*3*). **I. L. R. 41 Mad. 109**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120 AND 144. **I. L. R. 42 Bom. 333**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111, CL. (*g*). **I. L. R. 42 Bom. 195**

1. ADVERSE POSSESSION.

——— *Adverse possession—Title—Under-tenant—Purchase of tenancy by auction-purchaser—Incumbrance—Notice of annulment proceedings—Bengal Tenancy Act (VIII of 1885), ss. 161, 167.* When a person has, by adverse possession against a sub-tenant, acquired a statutory title to a portion of the lands comprised in the sub-tenancy, he has an interest in the sub-tenancy, so that when on a sale of the superior tenancy for arrears of rent, the purchaser seeks to annul the sub-tenancy as an "incumbrance," such person stands in the position of an "incumbrancer," and is entitled to notice under s. 167 of the Bengal Tenancy Act. BHUSHAN CHANDRA GHOSE *v.* SRIKANTA BANERJEE (1916) . **I. L. R. 45 Calc. 756**

2. LEASE.

——— *Mining Lease—Construction—Right to surrender—Condition as to payment of money due—Time for payment—Waiver.* The appellant by lease for 999 years granted to the respondents coal mining rights in certain villages. Royalties per ton of coal were to be paid quarterly, and if at the end of each Bengali year the amount so paid had not reached a fixed minimum the difference was to be paid within the two following months; rent for surface rights was to be paid annually. Cl. 9 provided that the respondents should be entitled to surrender any of the villages upon giving six months' written notice " and paying the minimum royalty for the said six months," and that the respondents should " not be entitled to surrender so long as any rent or royalty remains unpaid." On May 11, 1912, the respondents gave six months' notice of their intention to surrender all the villages. The appellants' manager requested that a formal deed of surrender should be executed. On May 22, 1913, the deed not having been yet tendered or the amount due ascertained, the appellant denied that the surrender was effectual on the grounds that the notice did not expire at the end of the Bengali year, and that the amount due had not been tendered; the appellant subsequently sued for royalties upon the basis that the lease was subsisting: *Held*, (i) that the right

LANDLORD AND TENANT—*contd.*

2. LEASE—*concld.*

to give notice under cl. 9 could be exercised at any time; (ii) that that clause did not require that the amount due should be tendered when the notice was given, and that, the appellant's manager having requested that the surrender should be by deed, the payment had not to be made until the deed was tendered; and (iii) that the lease had been terminated and the suit therefore failed. DURGA PRASAHD SINGH *v.* TATA IRON AND STEEL COMPANY, LIMITED (1918) . **L. R. 45 I. A. 275**

3. NOTICE TO QUIT.

——— *Notice to quit—Test of sufficiency—Service by registered Post—Transfer of Property Act (IV of 1882), s. 106.* A notice to quit, though not strictly accurate or consistent in its statements, may be effective, and should be construed *ut res magis valeat quam pereat.* The test is, what would the notice mean to the tenant who is presumably conversant with the terms and circumstances of the tenancy. A notice proved to have been properly directed and posted (especially if registered) is to be presumed to have reached the person to whom it is directed in the ordinary course of postal business, unless the contrary is proved. The fact that the receipt for a registered letter is signed on behalf of the addressee by a person who is not proved to have had authority from him to receive it is no evidence that the letter did not reach the addressee. The appellants held certain lands consisting of 2 Bighas 2½ Cuttahs, formerly in the possession of one *N. R.*, paying an annual rent of Rs. 25 to the respondents. The respondents sent by registered post to each of the appellants a notice to quit, purporting to refer to lands standing in the name of *N. R.*, of which the appellants were in possession, paying Rs. 25 yearly rent, but stating that the lands were 6 Cuttahs in extent. The receipt for the registered letters were in some cases signed by the addressee and in some purported to be signed on his behalf. The appellants did not give evidence denying the receipt of the notices. *Held*, that the notices were effective notices to quit the entire holding, and that the service was in compliance with s. 106 of the Transfer of Property Act, 1882. HARIHAR BANERJEE *v.* RAMSASHI ROY (1918). **L. R. 45 I. A. 222**

4. RENT.

——— *Presumption of permanency of rent—Bengal Tenancy Act (VIII of 1885) as amended by Bengal Acts of 1898 and I of 1903, ss. 31A, 50 (2) 113 and 115—Effect of ss. 31 and 113 of the Bengal Tenancy Act—Prevailing rate—Ground for enhancement of rent.* Where a Record of Rights has been finally published, in view of s. 115 of the Bengal Tenancy Act, the presumption under s. 50 (2) of the Act does not arise where the tenants have been recorded as occupancy raiyats and not raiyats holding at fixed rents. *Radha Kishore Manikya* v. *Umed Ali, 12 C. W. N. 904,* not followed. *Prithichand Lall Chowdhry* v. *Basarat Ali, I. L. R. 37 Calc. 30; 13 C. W. N. 1149,* relied upon. By enacting s. 31 of the Bengal Tenancy Act the Legislature never intended to alter the pre-existing law in districts to which that section has no application. Where each tenant holds at a different rate there is no prevailing rate. Even on the ground of prevailing rate, there can

LANDLORD AND TENANT—*concld.*

4. RENT—*concld.*

be no enhancement of rent for 15 years, under s. 113, of the Bengal Tenancy Act, where rent has been settled under Chap. X of the Act. HARIHAR PERSAD BAJPAI *v.* AJUB MISIR (1913).
I. L. R. 45 Calc. 930

5. TITLE.

——— *Denial of landlord's title when entails forfeiture—Power of Court to relieve forfeiture.* In order that a denial of landlord's title should work a forfeiture of the tenancy, three things are necessary: (*a*) the tenant must set up title either in himself or in a third party inconsistent with their mutual relationship, (*b*) the denial must be direct and unequivocal and not casual and (*c*) it must be made to the knowledge of the landlord. A casual statement, uncommunicated to the landlord, made by a tenant in a sale-deed executed by him in favour of a third party in respect of *other* properties, to the effect that the executant is the *owner* of the properties leased, does not amount to a disclaimer of the landlord's title. *Per* SESHAGIRI AYYAR, *J. Obiter*: A disclaimer of the landlord's title effects a forfeiture even if the tenure be for a specific term, and Courts have no power to relieve against it unless the disclaimer was occasioned by the fraud mistake or accident of the landlord and the tenant was neither careless nor negligent. KEMALOOTI *v.* MUHAMED (1917) . . **I. L. R. 41 Mad. 629**

LAND REVENUE.

——— **assignment for the office of Kulkarni—**

See PENSIONS ACT (XXIII OF 1871), S. 4.
I. L. R. 42 Bom. 257

LAND REVENUE CODE (BOM. ACT V OF 1879).

——— **s. 48**—*Bombay Act I of 1865, s. 35—Agricultural land—Land used for brick kilns—Fine levied under s. 35 of Bombay Act I of 1865—Revision Survey—Land classed as agricultural—Subsequent erection of buildings on the land—Collector's power to levy enhanced assessment as building fine under s. 48 of the Land Revenue Code.* The plaintiff, who held certain agricultural land, began to use it for purposes of brick kilns in 1872. For this conversion of use, a fine of 30 times the assessment was levied from him by the Collector, under the provisions of s. 35 of Bombay Act I of 1865. Some huts were erected on the land about the time. The revision survey of the land took place in 1889, when the land was assessed as agricultural land. In 1901, the plaintiff erected substantial buildings on the land, for which he was called upon by the Collector in 1912 to pay extra assessment at the rate of Rs. 85 per year. The plaintiff sued to recover back the amount of the extra assessment levied from him and for a perpetual injunction restraining the Collector from levying it in future. *Held*, that substantial buildings having been erected on the land after the revision survey of 1889, the plaintiff was liable to pay the enhanced assessment under the provisions of s. 48 of the Bombay Land Revenue Code, 1879. MAHAMADBHAI DOSUBHAI *v.* THE SECRETARY OF STATE FOR INDIA (1917).
I. L. R. 42 Bom. 126

LAND REVENUE CODE (BOM. ACT V OF 1879)—*concld.*

——— **ss. 74, 76—**

See RAJINAMA AND KABULIYAT.
I. L. R. 42 Bom. 359

——— **s. 85**—*Jurisdiction—Civil Court—Suit by superior holders against inferior holders to recover arrears of assessment.* The jurisdiction of civil Courts to try suits by superior holders to recover their dues from inferior holders is not barred by s. 85 of the Bombay Land Revenue Code (Bom. Act V of 1879). VISHWANATH GANESH *v.* KONDAJI (1917) . . . **I. L. R. 42 Bom. 49**

——— **s. 217—**

See KADIM INAMDAR.
I. L. R. 42 Bom. 112

LAND TENURE.

1. ——— *Sarbarakars in Khurdah—Absence of heritable or transferable Rights—Liability to dismissal for misconduct.* Sarbarakars in Khurdah have no heritable or transferable right in their office or in the Sarbarakari Jagir lands. They are liable to dismissal for misconduct, and upon dismissal lose all rights in the jagir lands. *Saddanando Maiti* v. *Nowrattan Maiti, 8 B. L. R. 280*, discussed. PARAMANANDA DAS GOSWAMI *v.* KRIPASINDHU ROY (1918) . . . **L. R. 45 I. A. 246**

2. ——— *Char acquired in 1833—Purpose of letting—Tenure-holder—No accrued right as raiyat—Bengal Tenancy Act (VIII of 1885), ss. 5, 19.* The appellant's predecessors in 1833 acquired from the Government extensive Char lands in Bengal for the purpose of reclaiming them and then letting them at a profit to cultivators. There was some evidence that on occasions prior to 1885 the Board of Revenue and its subordinates had regarded the holding as raiyati. *Held*, that the appellants were tenure holders within s. 5 of the Bengal Tenancy Act, 1885; and that s. 19, which saves occupancy rights accrued to raiyats prior to the Act, did not apply, as neither the appellants nor their predecessor had held a raiyati interest in the land. RAJANI KANTA GHOSE *v.* THE SECRETARY OF STATE FOR INDIA (1918) . . . **L. R. 45 I. A. 190**

LANDS CLAUSES CONSOLIDATION ACT (8 & 9 VICT., C. 18).

——— **ss. 63, 68—**

See RECOUPMENT.
I. L. R. 45 Calc. 343

LEASE.

See CUSTOMARY LAW OF SOUTH KANARA.
I. L. R. 41 Mad. 118

See OCCUPANCY RAIYAT.
I. L. R. 40 All. 228

——— **determination of—**

See EJECTMENT . **I. L. R. 45 Calc. 469**

——— **forfeiture of—**

See EJECTMENT . **I. L. R. 45 Calc. 469**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111, CL. (*g*).
I. L. R. 42 Bom 195

1. ——— *Assignment of a lease—Repudiation of lessor's title by the original lessee—Forfeiture.* A mere repudiation by the

LEASE—*contd.*

original lessee of the lessor's title will not work a forfeiture against the assignee of the lease. *Per* HEATON, *J.* The Transfer of Property Act does recognise that his interest in the property may be transferred by a lessee to an assignee and this may be done without the consent of the lessor and if that can be done it seems to me to follow as a matter of reason that when the entire interest is transferred by the lessee to the assignee, then the assignee is not responsible for acts done by the lessee. GOPAL JAYVANT *v.* SHRINIWAS VITHAL (1918) . . . . **I. L. R. 42 Bom. 734**

2. ——— *Construction of lease—Mokarari Lease—Grant of Land "mai hak hakuk" (with all rights)—Mineral and other sub-soil rights—Rights not expressly included in terms of lease. Held* (reversing the decision of the High Court), that the expression "*mai hak hakuk*" ("with all rights") in a mokarari lease of land did not add to the true scope of the grant nor cause mineral rights to be included within it. The essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed, and the corpus of which does not in the nature of things and by reason of the user, disappear. Unless there be by the terms of the lease an express, or plainly implied, grant of mineral rights they remain reserved to the zemindar, there being no evidence of his having parted with them. *Hari Narain Singh Deo* v. *Sriram Chakravarti, I. L. R. 37 Calc. 723; L. R. 37 I A. 136, Durga Prasad Singh*, v. *Braja Nath Bose, I. L. R. 39 Calc. 696; L. R. 39 I. A. 133*, and *Shashi Bhusan Misra* v. *Jyoti Prashad Singh Deo, I. L. R. 44 Calc 585; L. R. 44 I. A. 46*, followed. *Megh Lal Pandey* v. *Rajkumar Thakur, I. L. R. 34 Calc. 358*, overruled. By the terms of the lease trees on the land were expressly transferred to the grantee; but mineral rights were not so included in its terms; and the presumption was, therefore, that the zemindar had not intended to transfer them, and they did not pass under the lease. RAJ KUMAR THAKUR GIRIDHARI SINGH *v.* MEGH LAL PANDEY (1917). **I. L. R. 45 Calc. 87**

3. ——— *Darpatni, conditions in—Bengal Tenancy Act (VIII of 1885), ss. 159, cl. (b), 179—Transfer of Property Act (IV of 1882), s. 10—Receiver—Appointment of Receiver in administration suit—Civil Procedure Code (Act XIV of 1882), ss. 503, 505. A*, a *patnidar*, created a *darpatni*, in 1886 in favour of *B*, which contained the following terms: "like yourself we shall have full rights to grant leases or make settlements of land in the mofussil; but if these *darpatni* mahals be sold at auction for arrears of malikana (rent) due to you, then all agreements entered into by us shall be extinct (stand annulled)." The common manager of *B's* estate granted to the defendants a permanent under-tenure in 1901. *B* having defaulted to pay rent to *A*, the latter in execution of a decree for arrears of rent purchased *B's* interest on the 21st September 1904; the sale was confirmed in due course on the 20th March 1905. The Receiver of the estate of *A*, appointed by a decree in an administration suit, without permission from the District Judge, granted a *darpatni* to the plaintiff in 1906. *Held*, that *A* and *B* were competent to enter into a contract of permanent tenancy subject to the restriction actually imposed, which was one of the incidents of the under-tenure and ran with the land so as to be operative not only between the grantors and grantees but also

LEASE—*contd*

their representatives in interest and the holders of derivative titles from them. *Held*, also, that the condition in the lease not being an absolute restraint on alienation and being for the benefit of the lessor, neither the provisions of s. 159 of the Bengal Tenancy Act nor s. 10 of the Transfer of Property Act had any application. *Held*, further, that the Receiver not being appointed under s. 503 of the Civil Procedure Code of 1882 but by a decree in an administration suit the provision of s. 505 requiring permission of the District Judge did not apply, and the *darpatni* granted by such Receiver was valid and unassailable. MADHUSUDAN MAHTON *v.* MIDNAPORE ZEMINDARI CO. (1917). **I. L. R. 45 Calc. 940**

4. ——— *Lessee given the option of purchasing the land leased within a certain time for a fixed price—Assignment of the lease—Legal assignee of the lessee entitled to the benefit of the option to purchase—Conveyance—Vendor and purchaser—Purchaser to accept such title as the vendor possessed—Recitals about the title—Originating summons—Estoppel.* By an Indenture dated 1st March 1913, the defendants leased to one *B. P. M.* a plot of land for a term of ninety-nine years. Under cl. 7 of the Indenture the lessee obtained a right to purchase the premises demised at a price named within eighteen years from the date of the lease, the purchaser accepting such title as the vendors had. By an Indenture of Assignment dated 22nd May 1916, the lessee assigned the lease for the then residue of the said term to the plaintiff. The plaintiff intimated to the defendants by a notice in writing his intention of purchasing the said plot under the provisions of cl. 7. The defendants called upon the plaintiff to submit for their approval a draft conveyance of the said plot. The draft conveyance forwarded by the plaintiff to the defendants contained certain recitals tracing the title of the vendors from the last purchaser of the property. The defendants objected to the insertion of the said recitals and sought on their part to incorporate certain covenants in the draft. Correspondence between the parties showed that the dispute between them was solely confined to the insertion of the recitals and the covenants. The plaintiff took out an originating summons for the determination of the question whether the recitals and the covenants proposed by the respective parties should be embodied in the conveyance. The summons was adjourned into Court for hearing. At the trial the defendants, conceded that they could not at that stage insist on the covenants set out by them. The defendants, however, contended that the plaintiff was not entitled to the benefit of the option to purchase as he was not the original lessee but only an assignee of the lessee, and as the option to purchase was a personal covenant and not a covenant which ran with the land it did not enure to the benefit of the assignee. *Held*, (i) that the plaintiff being bound to accept such title as the vendors had the recitals set out by him in the proposed conveyance were unnecessary and should be struck out; (ii) that as the plaintiff was the legal assignee of the residue of the term of lease, he was entitled to the benefit of the option to purchase; (iii) that as the correspondence between the parties proceeded on the assumption that the plaintiff though an assignee of the lessee was entitled to exercise the option of purchase under the lease, the defendants having acquiesced in the same were estopped from disput-

LEASE—*concld.*

ing it. *Woodall* v. *Clifton, 92 L. T. 292,* distinguished, *Friary Holroyd and Healey's Breweries, Limited* v. *Singleton, [1899] 1 Ch. 86,* referred to. LADHABHAI LAKHMSI *v.* SIR JAMSETJI JIJIBHOY (1917) . . . . **I. L. R. 42 Bom. 103**

5. ——— *Surrender or relinquishment of, if requires a document—Co-sharer working mines—The other co-sharer's remedy—Accounts or partition—Equities.* A surrender or relinquishment of a lease does not require to be in writing but can be inferred from the acts of the parties. In the absence of proof of actual ouster or destruction of property one co-sharer cannot demand accounts from another co-sharer for minerals taken by him out of joint property unless it is shown that he had worked more than his fair share. No claim for account is maintainable where the co-sharer knowing that the other co-sharer had been spending large sums of money to develop the mines acquiesced. His remedy is by a suit for partition in which the other co-sharer should, if possible, be maintained in possession of the portion of the property upon which he has spent money. MEYER *v.* MONORANJAN BAGCHI (1918). **22 C. W. N. 441**

6. ——— *'Taluka pottah,' meaning of—Enhancement of rent in cases of permanent lease.* The use of the words "*Taluka pottah*" would *primâ facie* show that the interest granted to the lessee was intended to be a permanent one. The rule has always been in this country that generally, when the lease is a permanent one the rent is liable to enhancement, unless the landlord has precluded himself by a contract or is by law precluded from claiming an enhancement. UPENDRA LAL GUPTA *v.* JOGESH CHANDRA RAY (1917) . . . . . **22 C. W. N. 275**

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——— **s. 36**—*Touts—Procedure to be followed by a Court taking action under s. 36—Revision—Statute 5 & 6 Geo. V. Chap. 61, s. 107—Evidence—Criminal Procedure Code, s. 117 (3).* It is competent to the High Court to entertain an application in revision against an order passed by a District and Sessions Judge under s. 36 of the Legal Practitioners' Act, 1879, and this without invoking the aid of the Government of India Act, 1915, s. 107. *In the matter of the petition of Madho Ram, I. L. R. 21 All. 181, In the matter of the petition of Kedar Nath, I. L. R. 31 All. 59, Bavu Sahib,* v. *the District Judge of Madura, I. L. R. 26 Mad. 596,* and *Hari Charan Sarcar* v. *the District Judge of Dacca, 11 C. L. J. 513,* referred to. In a proceeding under s. 36 of the Legal Practitioners' Act, 1879, the Court may properly apply, as regards the nature of the evidence adducible, the provisions of s. 117 (3) of the Code of Criminal Procedure. Where a person's name has once been included in a list framed under s. 36 the mere fact that the exhibition of such list in any particular court room is discontinued has no effect on the validity of the original order. *In the matter of the petitions of* KALKA AND OTHERS (1917). **I. L. R. 40 All. 153**

LEGAL REPRESENTATIVE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 2 (*11*), 53.
I. L. R. 42 Bom. 504

LEGALITY.

See SEARCH WARRANT.
I. L. R. 45 Calc. 905

LEPROSY.

See HINDU LAW—LEPROSY.

LESSEE.

See USUFRUCTUARY MORTGAGE.
I. L. R. 40 All. 429

LETTERS OF ADMINISTRATION.

See COURT FEES ACT (VII OF 1870), ss. 19, (*viii*) 191; SCH. I, No. 11, AND SCH. III . . **I. L. R. 40 All. 279**

——— **application for—**

See PARTIES . **I. L. R. 45 Calc. 862**

LETTERS PATENT.

See AMENDED LETTERS PATENT.
I. L. R. 42 Bom. 260

LETTERS PATENT, 1865.

——— **cl. 15—**

See APPEAL **I. L. R. 45 Calc. 502, 818**

See MISJOINDER **I. L. R. 45 Calc. 111**

——— **cls. 15, 36**—*Appeal to High Court from award under Land Acquisition Act (I of 1894)—Bench of two Judges—Difference of opinion—Appeal under cl. (15) of the Letters Patent, whether maintainable—s. 98 (2), Civil Procedure Code (V of 1908) and cl. (36), Letters Patent, applicability of, to appeals in Land Acquisition cases—R. 2 of Appellate Side Rules, applicability of, to such appeals.* The decision of the High Court in a Land Acquisition appeal is not a 'judgment' within cl. (15) of the Letters Patent so as to enable a party to file a further appeal to the High Court under that article. *Rangoon Botatoung Company, Ld.* v. *The Collector, Rangoon, I. L. R. 40 Calc. 21,* and *The Special Officer, Salsette Building Sites* v. *Dessabhai Basanji Motiwala, 17 C. W. N. 421,* followed. S. 98 of the Civil Procedure Code applies to Land Acquisition appeals and if a bench of two Judges hearing an appeal differ as to the amount of additional compensation awardable, the proper order to pass on the appeal is to confirm the award of the lower Court under that section and not to give a decree up to the lower limit of additional compensation. *Kishen Dayal* v. *Irshad Ali, 22 C. L. J. 525,* distinguished. An award is a decree or order of a Civil Court within R. 2 of the Appellate Side Rules of the High Court. *Per* SESHAGIRI AYYAR, *J.* S. 98, Civil Procedure Code, is not strictly applicable to the facts of the case. MANAVIKRAMAN TIRUMALPAD *v.* THE COLLECTOR OF THE NILGIRIS (1918) . . **I. L. R. 41 Mad. 943**

LEX FORI.

See PROMISSORY NOTE.
I. L. R. 42 Bom. 522

LEX LOCI CONTRACTUS.

See PROMISSORY NOTE.
I. L. R. 42 Bom. 522

LIBEL.

——— *Defamation—Privilege—Civil liability of petitioner for statement made by him in a petition presented to Criminal Court.* A person presenting a petition to a Criminal Court is not liable in a civil suit for damages in respect of

LIBEL—*concld.*

statements made therein which may be defamatory of the person complained against. In the absence of Statute law in India regarding civil liability for libel, there is no reason why the English law applicable thereto should not be followed, according to the ruling of the Privy Council in *Waghela Rajsanji* v. *Sheikh Masulddin, L. R. 14 I. A. 89, Abdul Hakim* v. *Tej Chandar Mukarji, I. L. R. 3 All. 815*, overruled. *Augada Ram Shaha* v. *Nemai Chand Shaha, I. L. R. 23 Calc. 867*, dissented from. CHUNNI LAL *v.* NARSINGH DAS (1917).

I. L. R. 40 All. 341

LICENSE.

See FOREST ACT (VII OF 1878), S. 25, CL. (*i*), R. 3 (*a*).

I. L. R. 42 Bom. 406

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120, 144.

I. L. R. 42 Bom. 333

LIEN.

——— Declaration of—

See EXECUTION OF DECREE.

I. L. R. 45 Calc. 530

LIMITATION.

See LIMITATION ACT (IX OF 1908).

See AMENDED LETTERS PATENT, CL. 15.

I. L. R. 42 Bom. 260

See CIVIL PROCEDURE CODE (1908), S. 47, O. XLI, R. 1 . **I. L. R. 40 All. 12**

See CIVIL PROCEDURE CODE (1908), S. 48.

I. L. R. 40 All. 198

See CIVIL PROCEDURE CODE (1908), S. 122 . . **I. L. R. 40 All. 1**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 58 . **I. L. R. 40 All. 325**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIII, R. 5.

I. L. R. 41 Mad. 620

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5.

I. L. R. 40 All. 203

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 6.

I. L. R. 40 All. 551

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.

I. L. R. 42 Bom. 281

See DECREE . **I. L. R. 42 Bom. 728**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 48.

I. L. R. 42 Bom. 367

See EJECTMENT, SUIT IN.

I. L. R. 41 Mad. 641

See EXECUTION OF DECREE.

I. L. R. 40 All. 211

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 113 . **I. L. R. 41 Mad. 18**

See MORTGAGE . **I. L. R. 40 All. 407**

See MUTT . . **I. L. R. 41 Mad. 124**

See SUIT . . **I. L. R. 45 Calc. 934**

1. ——— *Attachment in execution—Claim proceeding—Claim rejected for default and without investigation—Subsequent title suit—Limitation Act (IX of 1908), Sch. I, Art. 11—Civil Procedure Code (Act V of 1908), O. XXI, rr. 58 and 63.* Where a claim is preferred under O. XXI, r. 58 of the Civil Procedure Code and an order is passed either allowing or rejecting, the party against whom the order is made, may, irrespective of whether any investigation took place or not, bring a suit in the language of O. XXI, r. 63, "to establish the right which he claims to the property in dispute" or in the language of Art. 11 of Sch. I of the Limitation Act, 1908, "to establish the right which he claims to the property comprised in the order," and the suit must be brought within the year allowed by Art. 11. *Sardhari Lal v. Ambika Pershad. I. L. R. 15 Calc. 521; L. R. 15 I. A. 123, Jugul Kishore Marwari* v. *Ambika Debi, 16 C. W. N. 882*, and *Umacharan Chatterjee* v. *Heron Moyee Debi, 18 C. W. N. 770*, referred to. *Narasimha Chetti* v. *Vijiapala Nainar, 27 Ind. Cas. 944*, and *Ponnusami Pillai* v. *Sanu Ammal, 31 Mad. L. J. 247*, approved. NAGENDRA LAL CHOWDHURY *v.* FANI BHUSAN DAS 1918).

I. L. R. 45 Calc. 785

2. ——— *Bengal Tenancy Act (VIII of 1885), ss. 104H, 111A—Scope of s. 104H—Limitation governing suits under s. 104H—Reliefs outside s. 104H but within proviso to s. 111A.* S. 104H of the Bengal Tenancy Act only refers to suits by a person aggrieved by an entry of rent settled in a Settlement Rent Roll prepared under ss. 104F to 104H or by an omission to settle such a rent and suits, falling under that section, are governed by the special limitation provided in that section. Where reliefs claimed are outside the scope of s. 104H and fall within the provision to s. 111A, the limitation applicable is that provided by Art. 120 of the second schedule to the Limitation Act. *Promoda Nath Roy* v. *Asiruddin Mandal, 15 C. W. N. 896*, followed. RAJANI KANTA MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA (1917).

I. L. R. 45 Calc. 645

3. ——— *Admission of appeal after period of limitation has expired without notice to respondent—Power of Court to grant reconsideration of order admitting it at instance of respondent—Practice of Courts in India—Suggestion by Privy Council that such practice should be altered by the Indian Courts with the view of securing final determination of any question of limitation at time of admission of appeal—Limitation Act (IX of 1908), ss. 4 and 5.* The admission of an appeal after the period of limitation has expired deprives the respondent of a valuable right by putting in peril the finality of the order in his favour. When an order admitting an appeal has been made in the absence of the respondent, and without notice to him, to preclude him from questioning its propriety would amount to a denial of justice. Such an order, so made, should therefore be treated as open to reconsideration at the instance of the respondent. This view is sanctioned by the practice of the Courts in India. *Held* also, that the Court was not exceeding its jurisdiction in permitting the question of limitation to be re-opened when the appeal came before it for hearing, and under the circumstances it had power to reconsider the sufficiency of the cause shown for the delay. That practice was not peculiar to Madras, but prevailed in other Courts in India. Such a practice, however, was in their Lordships' opinion open to grave objection, and it was urgently expedient that in place of such a practice, a procedure should be adopted by

LIMITATION—*contd.*

LIMITATION—*contd.*

Courts in India which would secure. at the stage of the admission of an appeal, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. KRISHNASWAMI PANIKONDAR *v.* RAMASWAMI CHETTIAR (1917).

I. L. R. 41 Mad. 412

4. ——— *Chaukidari Chakaran Lands—Transfer to zamindar—Suit by patnidar—Village-Chaukidari Act (Beng. VI of 1870)—Limitation Act (XV of 1877), Sch. II, Arts. 113, 144.* The respondent was patnidar or darpatnidar of villages under patnis granted by the appellant. Chaukidari Chakaran lands situated within the villages having been transferred by Government to the appellant, the respondent sued for declarations that the lands formed part of the several patnis, for settlements of the lands, and possession. *Held,* that the suits were not suits for specific performance of contracts within Art. 113 of sch. II of the Limitation Act, 1877, but suits for possession of immoveable property within Art. 144; and that the period of limitation accordingly was not three but twelve years. RANJIT SINGH *v.* MAHARAJ BAHADUR SINGH (1918).

L. R. 45 I. A. 162

5. ——— *Execution of money-decree—Part payment—Uncertified payment or adjustment—Civil Procedure Code Act (V of 1908), O. XXI, r. 2, sub-r. (3). Limitation Act (IX of 1908), s. 21, Sch. I, Art. 182.* Where a decree for money was made on the 24th November 1909 and an application for execution of the same was presented on the 7th June 1916 and where two payments were alleged to have been made in 1912 and 1913, respectively, neither of which was certified to the Court. *Held,* that the application was *primâ facie* barred by limitation under Art. 182 of the Limitation Act. *Held,* also, that an uncertified payment or adjustment could not operate to prolong the period of limitation for an application for the execution of a decree under the Limitation Act. *Held,* further, that under the Hindu Law, in the absence of the father, the mother was entitled to be the guardian of her infant sons in preference to their brother and was the "lawful guardian" under s. 21 of the Limitation Act. *Jogendra Nath Sarkar* v. *Provath Nath Chatterjee, 19 C. L. J. 126, Kutubullah Sarkar* v. *Durga Charan Rudra, 13 I. C. 424, Bhajan Lal* v. *Cheda Lal, 12 All. L. J. 825,* and *Mahtaboo* v. *Gunesh Lal (1854), (Beng.) S. D. A. 329,* followed. BIRESWAR MUKERJEE *v.* AMBIKA CHARAN BHATTACHARJEA (1917).

I. L. R. 45 Calc. 630

6. ——— *Limitation Act (IX of 1908) ss. 5, 14—General rule for exercise of judicial discretion to admit an appeal which would otherwise be time-barred—"Sufficient cause"—Reasonable diligence in prosecution of appeal—Deduction of time in prosecuting with due diligence an application for review of judgment—Order for abatement of suit—Civil Procedure Code, 1882, ss. 366, 368, 371—Revision allowed under s. 371—Order of abatement made ex parte—Judge refusing to follow general rule laid down by Full Bench case—Appellate Court can remit case or exercise discretion itself.* For the exercise of the judicial discretion allowed by s. 5 of the Limitation Act, 1908, to admit, for "sufficient cause" an appeal which would be otherwise barred as being out of time, the case of *Karm Bakhsh* v. *Daulat Ram, (1888) P. R. No. 183,* lays down a general rule that the true guide is whether the appellant has acted with reasonable diligence in the prosecution of his appeal; and he ought to be deemed to have so acted where, after deducting the time spent in prosecuting with due diligence a proper application for review of judgment, the period between the date of the decree appealed from and the date of presenting the appeal does not exceed the period prescribed for preferring an appeal. *In re Brojender Coomar Roy, B. L. R. Sup. Vol. 728; 7 Suth. W. R. 529,* in which *Nobbo Kissen Singh* v. *Kaminee Dassee, B. L. R. Sup. Vol. 349; 2 Suth. W. R. Mis. 85,* was followed, referred to. This general rule, or one practically similar, has been adhered to by all the High Courts in India; and the Judicial Committee will not interfere with such a rule of procedure so laid down. Where a Judge purporting to exercise such discretion does so under the view that there is no general rule, when in fact there is one which he ought to follow as being binding on him, he misdirects himself as to the law to be applied to the case; he cannot exercise a judicial discretion, and an Appellate Court should either remit the case or exercise the discretion itself. The remedy by revision given to the representatives of a plaintiff by s. 371 of the Civil Procedure Code, 1882, when an order for abatement of a suit has been made, is applicable whether the order has been made under s. 366, on the death of a plaintiff, or under s. 368, on the death of a defendant; the words of s. 371 being "where a suit abates under this chapter" which includes both ss. 366 and 368. An order abating a suit should not be made *ex parte.* The opposite party should be given an opportunity of appearing before any order for abatement is made. The introduction of a plaintiff or a defendant for one stage of a suit is an introduction for all stages, even if it be made on an appeal from a mere interlocutory order. BRIJ INDAR SINGH *v.* KANSHI RAM (1917).

I. L. R. 45 Calc. 94

7. ——— *Decree—Application for execution—Civil Procedure Code (Act V of 1908), O. XXI, rr. 18 and 17, cl. (2)—Application in accordance with law—Properties specified in the list furnished under O. XXI, r. 13, not competent to be proceeded with in execution—Filing of supplementary list of properties, if to be taken as part of the original application under the provisions of O. XXI, r. 17 (2)—Fresh application for execution, if necessary—Such application if to be treated as made in continuation of the original application for execution.* A decree was passed on the 28th November 1911, and on the 23rd November 1914 an application for execution was made which, on the face of it, was in accordance with law. Subsequently on the objection of the judgment-debtor it was discovered that against the properties specified in the list furnished under O. XXI, r. 13, proceedings could not be taken, and accordingly on the 14th January 1915 the decree-holder made an application to the Court for acceptance of a further list of properties with a prayer that the execution should proceed by attachment and sale of those properties, and the lower Appellate Court disallowed the prayer and held that the application for execution having been admitted and registered the proposed amendment could not be accepted and the decree-holder was to make a fresh application in execution. *Held,* that the supplementary list should be taken as part of the original application under the provisions

LIMITATION—*concld.*

of O. XXI, r. 17 (2), or if a fresh application were at all necessary, then the subsequent application furnishing a supplementary list of properties should be treated as one made in continuation of the application first presented on the 23rd November 1914; that in this view no question of limitation arose and that the decree-holder would be at liberty to proceed in execution as on his application, dated 23rd November 1914. GNANENDRA KUMAR ROY CHOUDHRY *v.* RISHINDRA KUMAR ROY CHOUDHRY (1918) . . . . . **22 C. W. N. 540**

8. ——— *Acknowledgment by judgment-debtor after attachment, effect of, as against auction-purchaser.* An acknowledgment by the judgment-debtor may save limitation against the auction-purchaser, but such acknowledgment if made after the attachment cannot prevail against the auction-purchaser who is entitled to have the property purchased by him in the condition in which it was at the time of attachment. RAJESWARI DASI *v.* BINODA SUNDARI DASI (1916). **22 C. W. N. 278**

LIMITATION ACT (XV OF 1877).

——— **Sch. II, Arts. 95, 141**—

See HINDU LAW—REVERSIONER. **I. L. R. 45 Calc. 590**

——— **Sch. II, Art. 109**—*Suit for mesne profits of* putni taluk *sold under Reg. VIII of 1819.* Art. 109 of the Limitation Act (XV of 1877) which prescribes a three years' rule of limitation is applicable to a suit for mesne profits where possession of the property in suit, *viz.*, a *putni taluk*, was obtained by the defendant under a sale held under Reg. VIII of 1819, which was subsequently set aside. SARAJ RANJAN CHOUDHURY *v.* PREMCHAND CHOUDHURY (1917) . . . . . **22 C. W. N. 263**

——— **Sch. II, Art. 179**—

See MORTGAGE . **I. L. R. 40 All. 407**

LIMITATION ACT (IX OF 1908).

——— **s. 2**—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 124 . **I. L. R. 41 Mad. 4**

——— **s. 3**—*Question of limitation, if may be considered for the first time in appeal.* The Court can, under s. 3, take notice of the question of limitation although it has not been taken up in the Courts below. NARASINGHA BANA GOSWAMI *v.* PROLHADMAN TEOARI (1918) . **22 C. W. N. 994**

——— **ss. 4, 5**—

See LIMITATION . **I. L. R. 41 Mad. 412**

——— **ss. 5, 14**—

See LIMITATION . **I. L. R. 45 Calc. 94**

1. ——— *Delay—Sufficient cause—Review—Strict proof, meaning of—Civil Procedure Code (Act V of 1908), O. XLVII, r. 4, sub-cl.* (2) (*b*). The plaintiff, a Mahomedan lady, applied for review of the judgment of the First Class Subordinate Judge, A. P., at Surat. Her appeal was dismissed by the Judge on October 8, 1915. The application for review was made on January 5, 1916, to the District Judge, Surat. This application to that Judge was irregular as before that the plaintiff had filed a second appeal to the High Court on November 10, 1915. After the withdrawal of the second appeal on March 29, 1916, the application of January 5, 1916, was

LIMITATION ACT (IX OF 1908)—*contd*

——— **ss. 5, 14**—*concld.*

transferred by the District Judge for disposal to the First Class Subordinate Judge. It was dismissed as being not properly made under O. XLVII, r. (1) of the Civil Procedure Code, 1908, to the Judge who passed the decree in appeal. The plaintiff, therefore, presented another application to the Subordinate Judge on May 6, 1916. On it being contended that it was barred by limitation: *Held*, that the plaintiff had shown sufficient cause for excuse of delay under ss. 5 and 14 of the Limitation Act, 1908. *Per* BATCHELOR, *Ag. C.J.*—By 'strict proof' in O. XLVII, r. 4, sub-cl. (2) (*b*), Civil Procedure Code, 1908, is meant anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. The words are not that the absence of negligence shall be 'conclusively established' or even 'satisfactorily proved.' What is required is that there be strict proof of this absence of negligence on the record and the phrase 'strict proof' refers to the formal correctness of the evidence offered, not to its effect or result. If the record does contain such strict proof, that is to say, such formal admissible evidence, it shall be for the trial Court only to assess its sufficiency. *Ahid Khondkar* v. *Mahendra Lal De, I. L. R. 42 Calc. 830, 837*, approved. BAI NEMATBU *v.* BAI NEMATULLABU (1918). **I. L. R. 42 Bom. 295**

2. ——— *Bonâ fide prosecution of proceeding in wrong Court, if sufficient ground for extending time for filing appeal.* An appeal against the decision of a Munsif was filed within time in the Court of the District Judge and a question being raised as to which was the proper Court of Appeal the District Judge took time to consider it and ultimately determined that under the notification of the High Court the Subordinate Judge's Court was the proper Court and returned the appeal which was on the same day filed in the latter Court. The Subordinate Judge rejected the appeal as time-barred. *Held*, that although s. 14 of the Limitation Act was inapplicable to appeals the principle of that section has been recognised by Courts as applicable to appeals in this sense that the *bonâ fide* prosecution of a proceeding in a wrong Court has been regarded as a proper ground or as sufficient cause within the meaning of s. 5 of the Limitation Act for extending the time for filing an appeal. RUPA THAKURANI *v* KUMUDNATH KARMAKER (1918) . . . **22 C. W. N. 594**

——— **s. 6**—*Purchaser from minor, if gets rights of minor.* The view that the plaintiff having purchased the property from a minor has got by the assignment the rights of a person under disability under s. 6 of the Indian Limitation Act, cannot be supported after the decision of the Full Bench in the case of *Rudra Canta* v.*Nobokissore, I. L. R. 9 Calc. 663.* BHAGABAN CHANDRA KAIBARTA DAS *v.* ISHAN CHANDRA KAIBARTA DAS (1918) . . . . . **22 C. W. N. 831**

——— **s. 7**—*Suit to recover arrears of Deshpandegiri cash allowance—Three years arrears can be recovered.* The plaintiffs, one of whom was a minor, being jointly entitled to a Deshpandegiri cash allowance, sued to recover arrears for six years prior to the suit. *Held*, that the plaintiffs were entitled to recover the arrears for three years only, for the minority of the second plaintiff could

LIMITATION ACT (IX OF 1908)—*contd.*

——— **s. 7**—*concld.*

not help the plaintiffs inasmuch as the adult plaintiff was in a position to give a discharge on behalf of himself as well as the minor. *Ganpat* v. *Sheshgiri, 6 Bom. L. R. 647*, distinguished. HUCHRAO TIMMAJI *v.* BHIMRAO GURURAO (1917)

I. L. R. 42 Bom. 277

——— **s. 7 and Art. 44**—*Sale by a Hindu mother as guardian of her only son—Second son in the womb at the time of sale—Subsequent sale by both the sons to another—First purchaser dispossessed by the latter—Suit in ejectment—Limitation.* The plaintiff claimed under a sale-deed executed by a Hindu widow as guardian of her only son at a time when she had another son in the womb. The plaintiff was afterwards forcibly ejected by the appellant who had obtained a later sale-deed from the elder son who executed it both on behalf of himself and his minor brother. The plaintiff sued in ejectment more than three years after the first son's attaining majority but within three years of the attainment of majority by the second. *Held*, that no suit having been brought by the first son within the period prescribed by art. 44 of the Limitation Act to set aside the sale, the plaintiff's right to the share of the first son became absolute and that as the mother did not execute the sale-deed as guardian of the second son, his share in the suit land did not pass to the plaintiff. *Held*, also, that as the causes of action for the two sons were different, s. 7 of the Limitation Act had no application to the facts of the case. *Doraiswami Serumadan* v. *Nondisami Saluvan, I. L. R. 38 Mad. 118*, distinguished. KANDASAMI *v.* IRUSAPPA (1917).

I. L. R. 41 Mad. 102

——— **s. 10**—*Whether applicable to suits in respect of property which has not been received by a trustee.* The insertion in s. 10 of the Indian Limitation Act, 1908, of the words " or the proceeds thereof, or for an account of such property or proceeds " has not had the effect of exempting from the ordinary rules of limitation suits against trustees for failure to reduce the trust property into possession. *New Fleming Spinning and Weaving Company, Limited* v. *Kessowji Naik, I. L. R. 9 Bom. 373, 399*, followed. THOLASINGAM CHETTY *v.* VEDACHELLA AIYAH (1917).

I. L. R. 41 Mad. 319

——— **s. 12**—

See CIVIL PROCEDURE CODE (1908), S. 122 . . . **I. L. R. 40 All. 1**

——— **ss. 13, 19 and 20**—*Loan to a partnership—One of the partners absent from British India—Suit for loan more than three years after loan but within three years after return of partner, whether barred and against whom—Release by some partners of a partnership debt, whether binding on legal representative of a deceased partner—Entries in debtor's accounts, whether payment of interest or acknowledgment.* The plaintiff's father was a partner along with the third, the sixth and eighth defendants, of a firm at E, which advanced certain loans in 1903 and 1904 to a firm at S of which the first defendant and the former defendants were partners; the first defendant was out of British India from 1903 to 1908. The plaintiff sued in 1909 to recover his share of the loans from the partners of the firm at S. The defendant pleaded that the suit was barred by limitation; the plaintiff relied in bar of limitation on s. 13 of the Limitation

LIMITATION ACT (IX OF 1908)—*contd.*

——— **ss. 13, 19 and 10**—*concld.*

Act and also on certain unsigned entries in defendants' account books in which the interest accruing due were added to principal from time to time; the first defendant further pleaded a release by defendants Nos. 3, 6 and 8 of the claim against him as binding on the plaintiff. *Held*, that the suit was not barred by limitation against the first defendant as the plaintiff was entitled to a deduction of the time during which the first defendant was out of British India but was barred against the other defendants under s. 13 of the Limitation Act; that the entries in the debtor's accounts could not be treated as payments of interest under s. 20 of the Limitation Act, or as acknowledgments under s. 19 of the Act as they were not signed by the debtors. *Held*, also, that a partner can release a partnership claim, and, after the death of a partner, the surviving partners have a right to release such a claim; that, if a release by any of the partners is fraudulent the other partners can avoid it and seek to recover their share of the released debt, but the legal representative of a deceased partner is not entitled to avoid it as the right to do so is personal to the partners. *Held* (on the facts), that the release of the first defendant by the third, sixth and eighth defendants was *bonâ fide* and binding on the plaintiff. PALANIAPPA CHETTIAR *v.* VEERAPPA CHETTIAR (1917).

I. L. R. 41 Mad. 446

——— **s. 15**—

See CIVIL PROCEDURE CODE (1908), S. 48.

I. L. R. 40 All. 198

——— **s. 18, Sch. I, Arts. 62, 115, 116**—

See CONTRACT . **I. L. R. 41 Mad. 488**

——— **ss. 19, 22; Sch. I, Arts. 106, 120**—*Dissolution of a partnership business—Indian Contract Act (IX of 1872), ss. 239, 253—Suit for account—Amendment—Suit that plaintiff was a partner, if may be amended on basis that he was servant remunerated by share of profit—Amendment asked for first time in the Court of Appeal—Acknowledgment of part of the claim, effect of.* The plaintiff brought a suit against certain defendants on 8th February 1913 alleging that he was a partner with the defendants up to 27th June 1910 when he retired from the partnership, and asking for an account. On the 12th February 1914, a necessary party (*e.g.*, representative of a deceased partner) was added as a defendant. The defendants in their written statement pleaded that the plaintiff was not a partner but a servant remunerated by a share of the profit; they also admitted in a letter, dated 21st January 1913, that they were liable to render an account to the plaintiff up to the year 1904-05 when the plaintiff retired and not till 27th June 1910. In the Court of Appeal the plaintiff (respondent) for the first time prayed that he might be allowed to amend his plaint on the footing that he was not a partner but a servant as alleged by the defendant in their written statement. *Held*, that the suit against all the defendants must be deemed to have been brought on the 12th February 1914 and was barred by limitation. To such a suit Art. 106 and not Art. 120 of the Limitation Act applied. *Held*, also, that having regard to the stage of the litigation at which the amendment was asked for and the nature of the amendment, it could not be granted. It is well-settled that where a plaintiff bases his claim upon a specific

LIMITATION ACT (IX OF 1908)—*contd.*

———— **ss. 19, 22 ; Sch. I, Arts. 106, 120**—*concld.*

legal relation alleged to exist between him and the defendant, he should not be allowed to amend the plaint so as to base it on a different legal relation. This rule is only one aspect of the broader principle that leave to amend should be refused where the amendment would introduce a totally different, new, and inconsistent case. The amendment was also refused on the ground that if the plaintiff were to institute a fresh suit on the date the amendment was asked for on the basis that he was a servant, the new suit would be barred by limitation. *Held*, further, that the letter of 21st January 1913 did not amount to an acknowledgment of the right claimed by the plaintiff. KALI DAS CHAUDHURI *v.* DRAUPADI SUNDARI DASSI (1917) . . . . . **22 C. W. N. 104**

———— **s. 20**—

See EXECUTION PETITION.

I. L. R. 41 Mad. 251

———— *Execution of decree bearing no interest—Payment saving limitation.* Where on an application for execution of a decree which did not bear any interest, made more than three years after the date of the previous application, the decree-holder relied on a payment which the judgment-debtor was found to have made to the decree-holder, within three years of the first application for execution but there was nothing to show that it was paid by way of interest. *Held*, that though the decree-holder might either apply to certify the payment before execution or might do so in his application for execution of the decree, the provisions of s. 20 of the Limitation Act would in no way be affected by it. The decree not bearing any interest, any payment made by the judgment-debtor must be taken to have been made in part payment of the principal; and such part payment must appear in the handwriting of the judgment-debtor or of his agent duly authorised in this behalf in order that limitation might get a fresh start. HARENDRA CHANDRA BHATTACHARYA *v.* GAGAN CHANDRA DAS (1916) . . **22 C. W. N. 325**

———— **s. 21, Sch. I, Art. 182**—

See LIMITATION . **I. L. R. 45 Calc. 630**

———— **ss. 21 (2), 19, 20**—*Partnership—Acknowledgment of liability or payment by one partner, when binding on others.* Direct evidence that one of several partners or co-contractors had authority to acknowledge liability or make payments so as to save limitation as against his partners or co-contractors is not necessary, but such authority can be inferred from surrounding circumstances such as the position of other co-contractors or partners. *Valasubramania Pillai* v. *Ramanathan Chettiar, I. L. R. 32 Mad. 421*, and *Shaik Mohideen Sahib* v. *The Official Assignee of Madras, I. L. R. 35 Mad. 142, 145*, considered. VEERANNA *v.* VEERABHADRASWAMI (1917).

I. L. R. 41 Mad. 427

———— **s. 28 ; Sch. I, Art. 144**—*Right recurring at uncertain intervals—Right to take wood from trees when fallen or cut—Adverse possession.* The father of the plaintiffs in 1867 obtained leave from the Collector to plant trees alongside a road on land belonging to Government. He expressed his willingness to do so at his own expense and to tend them ; and the only right he asked for was to get the fallen dry wood from the trees. Subsequently the village passed out of the possession of the plaintiffs' father, and on two occasions, in 1900 and in 1910, the defendant, who had purchased the village, got the proceeds of the sale of such wood. The plaintiffs on both occasions asserted their claim to wood or the price thereof, but were unsuccessful. Within six years from the date of the last sale they brought a suit for a declaration of their right to get the dry wood by virture of the agreement of 1867. The defendant pleaded adverse possession. *Held*, that the right being one which could only be exercised on uncertain occasions and not a right recurring at fixed periods, and as there had been disputes as to the right between the parties on two previous occasions, it could not be said that defendant had acquired a title by adverse possession. *Quære :* Whether s. 28 of the Indian Limitation Act, 1908, applies at all to a case like this. DEBI PRASAD *v.* BADRI PRASAD (1918) . . . . **I. L. R. 40 All. 461**

LIMITATION ACT (IX OF 1908)—*contd.*

———— **s. 28 ; Sch. I, Art. 144**—*concld.*

———— **ss. 29, 15 (2)**—

See SUIT . . **I. L. R. 45 Calc. 934**

———— **s. 29 (1) (b)**—

1. ———— *'Affect,' meaning of—Applicability of the Act to affect periods of limitation prescribed by Provincial Insolvency Act (III of 1907).* *Held* by the Full Bench, that recourse cannot be had to the general provisions of the Limitation Act (IX of 1908), in dealing with the admission of petitions and appeals presented after the time prescribed under the provisions of the Provincial Insolvency Act (III of 1907), as such recourse would *affect* the specially prescribed period of limitation, within s. 29 (i) (*b*) of the Limitation Act. *Abu Backer Sahib* v. *The Secretary of State for India, I. L. R. 34 Mad. 505*, followed. LINGAYYA *v.* CHINNA NARAYANA (1917).

I. L. R. 41 Mad. 169

2. ———— The effect of s. 29 (*1*) (*b*) of the Limitation Act is to make both Parts II and III of the Act inapplicable to a special period of limitation prescribed by a special or local law. SECRETARY OF STATE FOR INDIA *v.* SHIB NARAIN HAZRA (1918) . . **22 C. W. N. 802**

———— **Sch. I, Arts. 4, 7, 101, 102, 120**—*Hereditary archaka of a temple—Suspension by trustee—Suit by archakas for pay, perquisites and damages against trustees—Limitation for suit—Provincial Small Cause Courts Act (IX of 1887), Sch. Art. 13—Suit, whether cognizable by a Small Cause Court—Appeal against order of remand, whether competent.* The plaintiffs, who were hereditary *archakas*, in a temple, were suspended from their office in June 1912, by the trustees of the temple ; the order was passed on the 19th June 1912 and the suspension lasted till 3rd July 1912. The plaintiffs, alleging that the suspension was illegal and unjust, sued on the 28th June 1915 to recover their pay and perquisites as well as damages for mental distress, loss of dignity, etc., for an amount below Rs. 500 as against the trustees, the *peishkar* of the temple and the person who performed the duties of their office during their suspension. The lower Appellate Court having held that the suit was not barred by limitation as regards pay and perquisites and remanded the case to the Court of First Instance, one of the trustees preferred an appeal against the order of remand, contending

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Arts. 4, 7, 101, 102, 120—*concld.*

that the suit was wholly barred. The respondents (plaintiffs) raised a preliminary objection that the appeal was incompetent as the suit was of a small cause nature. *Held*, that an appeal lay to the High Court against the order of remand, as the suit was not cognizable by a Small Cause Court; that Art. 102 of the Limitation Act applied to the suit as against the trustees as regards the pay and the perquisites if payable by the temple, and the suit was not barred as regards such claims; that Art. 36 applied to the claim for perquisites if payable by third persons, as well as to the claim for damages, and the claims were barred; and that, as against the *peishkar*, there was either no cause of action or it was barred under Art. 36 of the Limitation Act. BARADWAJA MUDALIAR *v.* ARUNACHALA GURUKKAL (1917).

I. L. R. 41 Mad. 528

——— Sch. I, Art. 11—

See CIVIL PROCEDURE CODE (1908), O. XXI, r. 58 . **I. L. R. 40 All. 325**

See LIMITATION **I. L. R. 45 Calc. 785**

——— Sch. I, Art. 13—*Attachment of property before judgment—Order raising the attachment—Decree in the suit—Subsequent suit for a declaration that the property is liable to be attached for the decree—Existence of the order, whether bar to such suit.* An order releasing certain properties from attachment before judgment, is no bar to a subsequent suit for a declaration that they are liable to attachment in execution of the decree in the prior suit, and such suit is not governed by Art. 13 of the Limitation Act. *Bisheshar Das* v. *Ambika Prasad, I. L. R. 37 All. 575*, not followed. RAMANAMMA *v.* KAMARAJU (1917) . . . . **I. L. R. 41 Mad. 23**

——— Sch. I, Art. 44—*Sale of minor's property by his mother—Suit to set aside the sale brought more than three years after the minor attains majority.* The mother and natural guardian of a minor having sold the minor's property, a suit to set aside the sale was brought more than three years after the minor attained majority. *Held*, that the suit was barred under Art. 44 of the Indian Limitation Act, 1908. *Balappa* v. *Chanbasappa, 17 Bom. L. R. 1134*, and *Anandappa* v. *Totappa, 17 Bom. L. R. 1137*, footnote, distinguished. LAXMAVA *v.* RACHAPPA (1918) . . **I. L. R. 42 Bom. 626**

——— Sch. I, Art. 47—*Suit for recovery of land previously declared to be in defendant's possession under s. 145 of the Criminal Procedure Code (Act V of 1898)—Limitation—Order not* ultra vires, *because defective—"jurisdiction," meaning of.* In a proceeding under s. 145 of the Criminal Procedure Code regularly initiated by a preliminary order under sub-s. (*1*), the parties filed written statements. The first party to the proceedings after, some witnesses had been examined on his behalf, applied to withdraw from the proceedings stating that he would conduct the case in Civil Court and would not enter upon the land till the matter should have been settled by the Civil Court. The Magistrate reciting the above facts declared the second party to be in possession by an order passed on 24th August 1906. The first party instituted the present suit to recover possession on the 27th January 1912 and contended that the suit was not barred by Art. 47 of the Limitation Act because the order of the Magistrate was without jurisdiction. *Held*, that the suit was barred by Art. 47 of the Limitation Act. EAR MAHAMED SHAHA *v.* HEYAT MAHAMED SAHA (1917) . . **22 C. W. N. 342**

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 47—*concld.*

——— Sch. I, Arts. 89, 90—

See PRINCIPAL AND AGENT.

I. L. R. 41 Mad. 1

——— Sch. I, Art. 91—*Sale-deed executed by a minor—Void instrument—Suit to recover possession—Suit for cancellation of sale deed, whether necessary.* Art. 91, Sch. I of the Indian Limitation Act, 1908, does not apply to a suit for possession, where the plaintiff alleges and proves that a sale-deed is void because it was executed by him whilst a minor, but does not claim expressly to have it cancelled or set aside. NARSAGOUNDA *v.* CHAWAGOUNDA (1918) . . **I. L. R. 42 Bom. 638**

——— Sch. I, Art. 113—*Contract between two parties that on payment of a specified sum by one to the other, the latter would transfer a decree in his favour to a third party—Suit by such third party for specific performance of the contract—Limitation—Starting point.* *A* agreed with *B* that on the latter paying him a specified sum of money he would transfer a decree in his favour to *C*. In a suit by *C* against *A* for the specific performance of the contract by the execution of a deed of transfer. *Held*, that the suit was governed by the second part of Art. 113 and time began to run from the date on which *C* had notice that performance was refused and not from the date of payment to *A* by *B* of the sum agreed in the contract. Applicability of the doctrine of *certum est quod certum redde potest* to third parties, considered. VENKANNA *v.* VENKATAKRISHNAYYA (1917) . . . . **I. L. R. 41 Mad. 18**

——— Sch. I, Art. 118—*Limitation—Sale—Covenant to make good loss in case of vendee being compelled to pay money in excess of sale consideration—Breach of covenant—Suit against vendors on covenant of indemnity.* Where vendees are suing their vendors on a covenant of indemnity contained in their sale-deed, having been obliged to redeem a prior mortgage, the existence of which the vendors did not disclose, limitation runs, not from the date of the sale-deed, but from the date when the plaintiffs suffered actual loss by reason of their being compelled to pay off the prior mortgage charge. *Hari Tiwari* v. *Raghunath Tiwari, I. L. R. 11 All. 27*, referred to. RAM DULARI *v.* HARDWARI LAL (1918) . . . **I. L. R. 40 All. 605**

——— Sch. I, Art. 120—

1. ——— *Hypothecation of movable property—Suit to recover money lent by sale of the hypothecated property—Limitation.* Where a plaintiff who has lent money on the security of movable property seeks to recover the money by sale of the hypothecated property and does not ask for a personal decree against the debtor, the limitation applicable is that provided for by Art. 120 of the first schedule to the Indian Limitation Act, 1908. *Madan Mohan Lal* v. *Kanhai Lal, I. L. R. 17 All. 284, Nim Chand Baboo* v. *Jagabundhu Ghose, I. L. R. 22 Calc. 21*, and *Mahalinga Nadar* v. *Ganapathi Subbien, I. L. R. 27 Mad. 528*, followed. DEOKINANDAN *v.* GAPUA (1918) . . . . **I. L. R. 40 All. 512**

2. ——— A suit to enforce a mortgage of a turn of worship is not governed

LIMITATION ACT (IX OF 1908)—*contd.*

———— **Sch. I, Art. 120**—*concld.*

by Art. 132 but by Art. 120 of the Limitation Act. NARASINGHA BANA GOSWAMI *v.* PROLHADMAN. TEOARI (1918) . . . **22 C. W. N. 994**

———— **Sch. I, Arts. 120, 134, 144**—

See MUTT . . **I. L. R. 41 Mad. 124**

———— **Sch. I, Arts. 120, 142, 144**—

See UNSETTLED PALAYAM.
I. L. R. 41 Mad. 749

———— **Sch. I, Arts. 120, 144**—*Landlord and tenant—Tenant building on the land adjacent to the landlord's house—Staircase of the tenant's house supported by a pillar on the landlord's land—Injunction to remove the staircase—Trespass—Adverse possession—License.* In the year 1893, the defendant while a tenant of the house of which the plaintiff had taken a permanent lease in 1905 built his own house on the adjoining land and put up a staircase supported by a pillar. The plaintiff contended that the land on which the pillar rested belonged to him and that the pillar was put up by his predecessor-in-title nine years before suit. In 1912, he asked the defendant to pull down the staircase but the latter having refused, the plaintiff filed a suit on July 21, 1913, praying for a mandatory injunction directing the defendant to remove the staircase. The Subordinate Judge found that the land under the staircase belonged to the plaintiff but dismissed the plaintiff's suit on the ground that the pillar existed on the land for nineteen years. The Assistant Judge held that as the plot belonged to the plaintiff he was entitled to get the staircase removed. On appeal to the High Court it was contended that the staircase was standing on the land either by the license of the plaintiff's predecessor-in-title or adversly to them, but in any case the plaintiff's suit was barred under Art. 120 or 144 of the Limitation Act, 1908. *Held*, (i) that the plaintiff's suit was barred under Art. 120 of the Limitation Act, 1908, as it was not brought within six years from 1893 when the license to construct the staircase could have been granted. (ii) That the plaintiff's claim was also barred by adverse possession as the lower Courts having found that the staircase was put up nineteen years before suit the presumption was that from that date the defendant's possession was adverse. HARIRAM KISNIRAM *v.* SHIVABAKAS RAMCHAND. (1918) . . . . **I. L. R. 42 Bom. 333**

———— **Sch. I, Art. 124**—*Stani* in *Malabar constituted trustee of a temple and its properties—Absolute transfer by the stani of the trusteeship and temple properties to defendant's predecessor—Effect of adverse possession for over statutory period on succeeding Stani—S. 2 (d) of Limitation Act, definition of 'plaintiff' in.* According to the customary law of Malabar a *stanom* is descendible from one *stani* to another in a peculiar line of succession. A suit by a *stani* to recover a hereditary office of trustee of a temple and its properties, attached to the *stanom* is governed by Art. 124 of the Limitation Act and adverse possession for over the statutory period of the office of trustee and the properties of the trust as against a prior *stani* is a bar to a suit by the successor to recover the same. Though the successor gets his title not by any act of his predecessor but by succession according to the law of the land, he derives his right to sue only *from or through* his predecessor within s. 2, cl. (*8*) of the Limitation Act. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 271, 281,* applied. RAJA OF PALGHAT *v.* RAMAN UNNI (1917).
I. L. R. 41 Mad. 4

LIMITATION ACT (IX OF 1908)—*contd.*

———— **Sch. I, Art. 124**—*concld.*

———— **Sch. I, Art. 125**—*Alienation by a Hindu widow—Failure of existing reversioners to sue to set it aside within twelve years, effect of, on future reversioners—Representative character of the suit.* A suit by a reversioner to set aside an alienation by a Hindu widow is a representative suit on behalf of all her reversioners, then existing or thereafter to be born, and all of them have but a single cause of action, which arises on the date of the alienation. Hence, if by failing to sue within twelve years, allowed by Art. 125 of the Limitation Act (IX of 1908), the existing reversioners become barred by limitation, reversioners thereafter born are equally barred. *Venkatanarayana Pillai* v. *Subbammal, I. L. R. 38 Mad. 406, Janaki Ammal* v. *Narayanaswami Aiyer, I. L. R. 39 Mad. 734,* followed. *Govinda Pillai* v. *Thayammal, I. L. R. 28 Mad. 57, Veerayya* v. *Gangamma, I. L. R. 36 Mad. 570, Narayana* v. *Rama, I. L. R. 38 Mad. 396,* and *Venkata Row* v. *Tuljaram Row, (1917) Mad. W. N. 30,* overruled. *Semble:* A decision one way or other, in a suit by one of them binds all of them. *Per* SESHAGIRI AYYAR, *J. Semble:* That Art. 125, does not apply to persons not born at the date of the alienation, but that the right to declaratory relief of this nature is only conferred on persons alive at the date of the alienation. VARAMMA *v.* GOPALADASAYYA (1918) . **I. L. R. 41 Mad. 659**

———— **Sch. I, Arts. 126, 144, 148**—*Sale of equity of redemption by one of two mortgagors—Redemption by vendee—Possession of property by vendee for more than twelve years—Sale by the other co-mortgagor to another—Suit by latter to redeem his half-share—Suit, more than twelve years after first vendee took possession on redemption, whether barred.* The first defendant and his father *G*, mortgaged with possession the suit lands to the second defendant in 1892; in 1897 *G* sold the equity of redemption to the third defendant, who redeemed the lands and obtained possession in 1898. The first defendant sold his interest in the lands in 1910 to the plaintiff, who instituted a suit in 1912 to redeem his half-share in the property on payment of half the mortgage-debt. The third defendant pleaded that the suit was barred by limitation. *Held*, that Art. 148 of the Limitation Act was not applicable to the case and the suit was barred by limitation, as the case fell within Art. 126. *Semble:* The suit was also barred under Art. 144. *Jai Kishen Joshi* v. *Budhanand Joshi, I. L. R. 38 All. 138, Bhaiji Shamrao* v. *Hajimiya Mahomed, 14 Bom. L. R. 314,* followed; and *Ramaswami Ayyar* v. *Vanamamalai Ayyar, I. L. R. 23 Bom. 137;* S. C., *26 I. C., 873, Vasudeva Mudaly* v. *Srinivasa Pillai, I. L. R. 30 Mad. 426,* explained. MUNIA GOUNDAN *v.* RAMASWAMI CHETTY (1918).
I. L. R. 41 Mad. 650

———— **Sch. I, Art. 130**—*Land entered in record-of-rights as liable to assessment—Suit to assess rent—Limitation—Suit, if maintainable by a co-sharer landlord—Bengal Tenancy Act (VIII of 1885), ss. 188 and 103B.* Defendant's lands having in 1910 been entered in the record-of-rights as liable to be assessed with rent, the recorded landlord brought the present suit for assessment of rent. The District Judge held that the right to have the rent assessed having accrued to the plaintiff more

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 130—*concld.*

than twelve years before the suit, it was barred by limitation under Art. 130 of the Limitation Act, and dismissed the suit disagreeing with the Munsif's finding that the suit having been brought within twelve years of the publication of the record-of-rights was within time. *Held*, that the Munsif was wrong in taking the entry in the record-of-rights as the starting point for limitation as such an entry confers no title. That the suit was not one for "resumption or assessment of rent-free land" within the meaning of Art. 130, but a suit for the assessment of land presumably liable to be assessed. That the fact rent has not in fact been paid more than twelve years before suit is not *per se* sufficient to support a decree for dismissal of such a suit, for the right to have rent assessed must continue so long as the relationship continues of landlord and tenant of land liable to be assessed. That such a relationship and liability were to be presumed from the record-of-rights, and it was for the defendant to rebut this presumption by evidence. A suit to assess rent is consistent with and arises out of the general law and the land revenue system of the country, and is not one which the landlord is "required or authorised" to do under the Bengal Tenancy Act within the meaning of s. 188 of that Act. A co-sharer landlord is therefore entitled to institute such a suit. That had s. 188 of the Bengal Tenancy Act applied, the fact that the plaintiff had joined his co-sharers as defendants would not have justified the Court in entertaining the suit "on principles of justice and equity." DHANANJOY MANJHI *v.* UPENDRA NATH DEB (1918) . . . . . **22 C. W. N. 685**

Sch. I, Arts. 137, 139, 142—*Suit for possession by auction-purchaser—Onus on plaintiff to prove judgment-debtor's possession at date of sale or that judgment-debtor became entitled to possession within 12 years of suit.* The plaintiff, an auction-purchaser of certain lands, sued to recover possession on declaration of title. His case was that the judgment-debtor was in possession at the date of the sale and subsequently, and when he went to take possession on their vacating the land he was met by the defendant who alleged that they had been in possession from before the execution sale and contended that the suit was barred. *Held*, that the suit was governed either by Art. 137 or Art. 138 or Art. 142 of the Limitation Act and the onus was entirely on the plaintiff to prove not only that he had a title but a subsisting title which he had not lost by the prescriptive sections of the Limitation Act, *i.e.*, he must show which Article of the Limitation Act saved his suit from the bar of limitation and the lower Court erred in law in throwing the burden of proof on the defendants to show that they had been in adverse possession for over 12 years. DOKARI JODDAR *v.* NILMANI KUNDU (1916) . . . **22 C. W. N. 319**

Sch. I, Arts. 141, 142, 144—

See HINDU LAW—JOINT FAMILY.
I. L. R. 42 Bom. 69

Sch. I, Arts. 141, 144—*Alienation by a widow—Death of the widow—Property taken by surviving co-widow—On her death property vesting in the daughter as reversionary heir—Suit by daughter's son to recover possession—Adverse possession.* One *D* died leaving two widows *K* and *R* and daughters *S* and *T*. In 1897 the senior widow

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 141, 144—*concld.*

K sold the property in suit to defendant No. 1. In July 1902 *K* died. Thereupon *R* as the surviving co-widow took the property for a widow's estate. *R* died on January 17, 1903. On her death, the daughters *S* and *T* inherited the property. *S* died in 1907 and *T* in 1911. On January 13, 1915, S's son brought a suit to recover possession of the property sold by *K*. Both the lower Courts held that the suit was barred by limitation under Art. 144 of the Limitation Act, 1908. On appeal to the High Court, it was contended that the suit was governed by Art. 141 of the Limitation Act, 1908, and, if not, in any case, it was not barred by adverse possession under Art. 144. *Held*, that Art. 141 of the Limitation Act, 1908, did not apply as that Article was restricted to suits by a plaintiff whose right and title to sue for possession occurred upon the death of a female holding the limited woman's estate. The suit was, however, not barred under Art. 144 of the Limitation Act, 1908, as no adverse possession began to run against the plaintiff until the death of R on January 17, 1903. MALKARJUN MAHADEO *v.* AMRITA TUKARAM (1918).
I. L. R. 42 Bom. 714

Sch. I, Art. 148—

1. ——— *Limitation—Usufructuary mortgage—Redemption—Right of purchaser of equity of redemption in part of the mortgaged property.* A purchaser of the equity of the redemption in a part of the mortgaged property, is entitled to redeem his own portion of the property within sixty years of the date of the mortgage from another person who having purchased another portion of the mortgaged property has redeemed the entire mortgage and is in possession of the entire property. The limitation applicable to a suit of this description is that provided by Art. 148 of Sch. I to the Indian Limitation Act. *Ashfaq Ahmad* v. *Wazir Ali, I. L. R. 14 All. 1*, followed. *Jai Kishan Joshi* v. *Budhanand Joshi, I. L. R. 38 All. 138*, referred to. WAZIR ALI *v.* ALI ISLAM (1918) . . . . **I. L. R. 40 All. 683**

2. ——— *Persons owning a portion of the equity of redemption paying off the whole mortgage—Suit by remaining co-sharer to redeem—Limitation—Mortgage and charge—Transfer of Property Act (IV of 1882), ss. 95, 100—Person taking exclusive possession under a Court sale of the whole, though interest of certain co-sharers only sold—Possession, whether as co-share or exclusive.* Where on 7th May 1890, in execution of a decree against two out of three brothers who had mortgaged their property, one *A* purported to purchase the whole property which he redeemed on 6th April 1892 by paying off the mortgage, and *A* or persons claiming through *A* remained in sole possession of the property for 19 years from 19th April 1892, when *A* obtained possession through Court, until the present suit by an assignee of the share of the remaining brother *K* was brought for redemption of *K's* one-third share of the property in the hand of *A's* successor in interest. *Held*, that under s. 95 of the Transfer of Property Act, *A* obtained a charge on the one-third share of *K*, which not being a mortgage, Art. 148 of the Limitation Act did not apply to the suit. That suit having been brought more than twelve years from the date when the charge came into existence and more than twelve years from the date when *A* obtained exclusive possession was barred by limit-

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Art. 148—*concld.*

ation. That in the circumstances, the possession of *A* under a sale of the whole property was not that of a co-sharer of *K* and was exclusive of him. PURNA CHANDRA PAL *v.* BARODA PROSANNA BHATTACHARJYA (1918) . . **22 C. W. N. 637**

Sch. I, Art. 181—

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5.

I. L. R. 40 All. 203

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 6.

I. L. R. 40 All. 551

Mortgage—Suit for sale—Application for final decree—Limitation. An application for final, decree in a suit for sale on a mortgage being an application in the suit and not an application in execution, the fact that one such application has been made within the prescribed period of limitation does not operate to extend the period of limitation in favour of a second application, the first having been dismissed for default. AHMAD KHAN *v.* MUSSAMMAT GAURA (1917) . . . . **I. L. R. 40 All. 235**

Sch. I, Arts. 181, 182—*Civil Procedure Code (Act V of 1908), s. 48—Decree—Execution—Amendment of the decree—Date of judgment, the date of the amended decree—Right to apply to make the decree final under Civil Procedure Code (Act V of 1908), O. XXXIV, r. 5—Limitation—Starting point—Procedure.* On the 17th November 1897, a decree on an award was passed. The decree did not embody the terms of the award. Plaintiff applied for execution of the decree. It was opposed by the defendants on the ground that the decree did not specify the relief that was granted and was on that account incapable of execution. The Court then directed the plaintiff to obtain an amendment. On January 28, 1899, the decree was amended so as to bring it into consonance with the directions of the award and was dated 28th January 1899. Several applications for execution were made the last of which was dated 2nd December 1909. The lower Court held the application in time and allowed execution to proceed. On appeal it was contended (1) that the application was barred so far as it related to two sums of Rs. 575 and Rs. 6,000 which under the decree were to be paid forthwith that is, 17th November 1897, the date on which the decree was passed and which must be taken as the starting point for limitation; (2) that the application as a whole was barred by limitation, as the application must be treated as an application for a decree final for sale under O. XXXIV, r. 5 of the Civil Procedure Code, 1908, and as such it was barred under Article 181 of the Limitation Act, 1908, for the right to apply accrued when default in payment was made and that was found to have been in 1902. *Held*, (i) that the recovery of the two sums was barred as the decree was to be referred to 17th November 1897, the date of the judgment and not to 28th January 1899, the date of the amended decree, (ii) that the application was not barred as the right to apply under O. XXXIV, r. 5, never accrued to the plaintiff until the Code of 1908 conferred it upon him; the plaintiff was, therefore, entitled to claim that under Art. 181 of the Limitation Act, 1908, he would have a period of three years from 1st January 1909, when the new Code of Civil Procedure came into

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I, Arts. 181, 182—*concld.*

force. *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee, I. L. R. 38 Calc. 913*, distinguished. NARSINGRAO KONHAR INAMDAR *v.* BANDO KRISHNA (1918) . . . . **I. L. R. 42 Bom. 309**

Sch. I, Art. 182—*Execution of decree—Limitation—Step in aid of execution.* An application for execution of a decree was made on the 20th January 1911. The judgment-debtor put in an objection and the Court ordered the parties to adduce evidence in support of the respective cases. In the course of these objection proceedings the decree-holder on the 25th November 1911 filed a list of witnesses and intimated to the Court that he was ready to proceed with his case. *Held*, that this should be taken to be an application to the Court to take some step in aid of execution and a subsequent application for execution of the decree filed on the 22nd August 1914 was within time. BROJENDRA KISHORE ROY CHOUDHURY *v.* DIL MAHMUD SARKAR (1918) . **22 C. W. N. 1027**

Sch. I, Art. 182 (5)—*Execution of decree—Limitation—Step in aid of execution.* An application to the Court executing a decree asking that certain objections to the execution of the decree be rejected is a step in aid of execution within the meaning of Art. 182 (5) of the first schedule to the Indian Limitation Act, 1908. TAMIZ-UN-NISSA BIBI *v.* NAJJU KHAN (1918).

I. L. R. 40 All. 668

Sch. I, Art. 182, Expl. I.—*Execution of decree—Limitation—Execution of decree of first Court and of decree of Appellate Court for costs carried out separately.* In execution of a decree against *S*, *D* attached a decree held by *S* against himself and others for possession of certain property and costs. This decree had been the subject of an appeal by *D* and one other of the judgment-debtors, which had resulted in a decree for costs against the two appellants only. The last application for execution of this decree was made in 1907. As to the lower Court's decree *D* made various applications for execution and succeeded in realizing all that was due under it. *S* became insolvent, and the receiver sold to one *M* whatever rights *S* may have had under either decree; but on application for execution made by the purchaser, it was *held* that there was nothing more to realize under the original decree and that execution of the appeallate decree was barred by limitation. GHULAM MUHI-UD-DIN KHAN *v.* DAMBAR SINGH (1918) . . . . **I. L. R. 40 All. 206**

Sch. I, Art. 182, cl. (2)—*Decree modified by High Court in revision, if gives new start to limitation.* A decree was passed on consent by the High Court directing that the plaintiffs do pay to the defendant the price to be ascertained by the first Court of a certain property within one month from the date of the valuation being made and that upon such payment the defendant do convey the property to the plaintiff. The first Court made the valuation and embodied it in a supplementary decree. An appeal from this decree was rejected by the High Court but in revision the said Court on 14th June 1909 held that no supplementary decree should have been passed, and that the decree of the High Court became capable of execution one month after the making of the valuation, *viz.*, on 12th January 1905. The defendant applied for execution of the decree on 23rd August 1911.

LIMITATION ACT (IX OF 1908)—*concld.*

——— **Sch. I, Art. 182**—*concld.*

Held, that under cl. (*2*) of Art. 182 of the Limitation Act, limitation ran from the order in revision passed by the High Court on 14th June 1909, which modified the decree of the first Court and the application was within time. GURUPADA HALDAR *v.* TARIT BHUSAN RAY CHOUDHRY (1915).
22 C. W. N. 158

——— **Sch. I, Art. 182** (*5*)—*Execution of decree—Limitation—Application accompanied by a copy of the decree—Civil Procedure Code (1908), O. XXI, r. 11.* An application for execution of a decree which complies with the requirements of cl. (*2*) of r. 11, O. XXI, of the Code of Civil Procedure, cannot be said to be an application which is not "in accordance with law" within the meaning of Art. 182 (*5*) of the first schedule to the Indian Limitation Act, 1908, only because it is not accompanied by a copy of the decree, which may be required by the Court under cl. (*3*) of the rule. RAGHUNANDAN LAL *v.* BADAN SINGH (1918).
I. L. R. 40 All. 209

——— **Sch. I, Art. 182, cls.** (*5*) **and** (*6*)—*Step-in-aid of execution—Application to transfer the decree to the Court of a Native State for execution.* An application made to a British Indian Court to transfer its decrees for execution to the Court of a Native State, between whom and the British Government there exists an agreement to execute each other's decrees, is a step-in-aid of execution within the meaning of Art. 182 of the Indian Limitation Act, 1908. JANARDAN GOVIND *v.* NARAYAN KRISHNAJI (1918).
I. L. R. 42 Bom. 420

——— **Sch. I, Art. 182, Cl.** (*6*)—*Execution of decree—Step-in-aid of execution—Order to issue notice—Actual issue of notice—Time runs from the actual issue.* Cl. 6 of Art. 182 of the first schedule to the Indian Limitation Act, 1908, makes the time run, not from the date when the Court passes an order to issue the notice but, from the date on which the notice is actually issued. NILKANTH LAXMAN *v.* RAGHU *bin* MAHADU (1918).
I. L. R. 42 Bom. 553

——— **Sch. I, Art. 182** (*6*) **; s. 7**—*Execution of decree—"Date of issue of notice"—Minority—Supervention of a minority after limitation has commenced to run. Held*, on a construction of article 182 (*6*) of the first schedule to the Indian Limitation Act, 1908, that the expression "the date of issue of notice" must be taken as the date on which the order of the Court directing that notice be issued to the judgment-debtor is passed. *Held*, also, that when the decree-holders are all of full age at the time of a passing of the decree execution of which is sought, and limitation has already commenced to run, the subsequent intervention of a minority does not entitle the decree-holders to the benefit of s. 7 of the Indian Limitation Act, 1908. *Bhagat Bihari Lal* v. *Bam Nath, I. L. R. 27 All. 704*, referred to. *Zamir Hasan* v. *Sundar, I. L. R. 22 All. 199*, distinguished. KALKA BAKHSH SINGH *v.* RAM CHARAN (1918).
I. L. R. 40 All. 630

LIQUIDATION.

See COMPANY.
I. L. R. 42 Bom. 159, 264

LIQUIDATORS.

——— **charges created by—**

See COMPANY . **I. L. R. 42 Bom. 215**

LIS PENDENS.

See COMPANY . **I. L. R. 42 Bom. 215**

——— *Transfer of Property Act (IV of 1882), s. 52—No contest between defendants—Alienation by one defendant to a stranger pending suit, whether affected by* lis pendens. The rule of *lis pendens* enunciated in s. 52 of the Transfer of Property Act does not differ from the English rule and it protects parties to litigation against alienations by their opponents pending suit; and the prohibition contained in the section is like *res judicata* inapplicable between parties to the suit who are ranged on the same side and between whom there is no issue for adjudication. 'Any other party' in s. 52 means any other party between whom and the party alienating there is an issue for decision which might be prejudiced by the alienation. *Bellamy* v. *Sabine, (1857) De G. & J. 566*, and *Faiyaz Husain Khan* v. *Prag Narain, I. L. R. 29 All. 339, 345*, applied. In a previous suit by *A* to set aside a sale made by him to *B* as void and invalid and consequently to set aside a mortgage made by *B* to *C* also as invalid, the plea of *B* and *C* that both the sale and mortgage were good was upheld. Pending the suit *D* bought *B's* rights in a Court auction. In a subsequent suit by *C* to enforce the mortgage: *Held*, that *D's* purchase was not affected by *lis pendens* as there was no contest between *B* and *C* in the previous suit as to the validity of the mortgage and that *D* was entitled to plead that the mortgage was invalid as having no consideration. KRISHNAYA *v.* MALLYA (1917) . **I. L. R. 41 Mad. 458**

LIST OF MEMBERS.

See COMPANY . **I. L. R. 45 Calc. 490**

LOTTERY.

See CONTRACT ACT (IX OF 1872) S. 30.
I. L. R. 42 Bom. 676

LUNACY ACT (IV OF 1912).

——— **ss. 62, 63**—"*Relative*" *in s. 63, meaning of—Wife's brother, if a "relative"—Inquisition proceedings, if may be started on verified petition only without medical certificates.* The brother of the wife is a "relative" within the meaning of cl. 11 of s. 63 of the Lunacy Act competent to apply to the Court for the initiation of proceedings for inquisition. A District Judge is competent to take action for inquisition on a verified petition unaccompanied by medical certificates which under the rules of the High Court must be filed in such proceedings in the Original Side of that Court. MANI LAL SIL *v.* NEPAL CHANDRA PAL (1917).
22 C. W. N. 547

M

MADRAS ACTS.

——— **1859—XXIV.**

See MADRAS DISTRICT POLICE ACT.

——— **1864—II.**

See MADRAS REVENUE RECOVERY ACT.

MADRAS ACTS—*concld.*

———— **1865—VIII.**

See MADRAS RENT RECOVERY ACT.

———— **1873—III.**

See MADRAS CIVIL COURTS ACT.

———— **1884—IV.**

See DISTRICT MUNICIPALITIES ACT (MADRAS).

———— **1889—III.**

See MADRAS TOWNS NUISANCES ACT.

———— **1890—VIII.**

See GUARDIANS AND WARDS ACT.

———— **1894—II.**

See PROPRIETARY ESTATES VILLAGE SERVICE ACT.

———— **1895—III.**

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

———— **1896—IV.**

See MALABAR MARRIAGE ACT.

———— **1900—I.**

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MADRAS).

———— **1902—II.**

See COURT OF WARDS ACT (MADRAS).

———— **1907—I.**

See MOTOR VEHICLES ACT (MADRAS).

———— **1908—I.**

See ESTATES LAND ACT (MADRAS).

MADRAS CIVIL COURTS ACT (III OF 1873).

———— **s. 14**—*Court Fees Act (VII of 1887), s. 7,* (v) *and* (vi)—*Suit for pre-emption—Valuation of suit for purposes of jurisdiction—Suit originally filed in District Munsif's Court—Return of plaint as beyond its jurisdiction—Presentation of plaint in a Subordinate Judge's Court—Plaint again returned by latter Court—Appeal to District Court against order of District Munsif, whether competent—Election of remedies—Civil Procedure Code, O. XLVIII, r. 1.* The plaintiff instituted the suit in a District Munsif's Court to enforce his right of pre-emption in respect of the suit lands which had been mortgaged to him on otti for Rs. 3,190, and were sold to some of the defendants for Rs. 4,500. The District Munsif returned the plaint for presentation to the proper Court, holding that the suit was beyond his pecuniary jurisdiction. On the plaint being presented in a Subordinate Judge's Court, it was returned again by that Court which held that the former Court had jurisdiction. The plaintiff, thereupon, preferred an appeal to the District Court against the order of the District Munsif. The defendants raised a preliminary objection that the appeal was incompetent and also contended that the District Munsif had no jurisdiction to entertain the suit. *Held,* that the appeal to the District Court was maintainable, although the plaintiff had filed the plaint in the Subordinate Judge's Court in pursuance of the order of the District Munsif. *Held,* also, that the proper valuation of a suit for pre-emption is, for purposes of jurisdiction, in accordance with s. 14 of the Madras Civil Courts Act that fixed in the manner provided by the Court Fees Act, s. 7 (*v*); and that so valued the present suit was within the jurisdiction of the District Munsif's Court. NARAYANAN NAIR *v.* CHERIA KATHIRI KUTTY (1918).

I. L. R. 41 Mad. 721

MADRAS CIVIL COURTS ACT (III OF 1873)—*concld.*

———— **s. 14**—*concld.*

MADRAS DISTRICT POLICE ACT (MAD. XXIV OF 1859).

See UNSETTLED PALAYAM.

I. L. R. 41 Mad. 749

MADRAS DISTRICT POLICE ACT (XXIV OF 1859).

———— **s. 46**—*'Threat,' meaning of—Demand by a police constable of mamul or customary payment, whether an offence under the section.* A demand by a police constable, of a 'mamul' (customary payment made to obtain his favour), is a '*threat*' within s. 46 of the Police Act (XXIV of 1859) and obtaining money by such a threat is an offence under the section. THE KING EMPEROR *v.* LAL BAGE (1917) . . . **I. L. R. 41 Mad. 465**

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).

See UNSETTLED PALAYAM.

I. L. R. 41 Mad. 749

MADRAS RENT RECOVERY ACT (MAD. VIII OF 1865).

———— **s. 11**—*Payment of enhanced rent—Implied contract—Absence of consideration.* The Madras Rent Recovery Act, 1865, s. 11, among rules to be observed in the decision of suits regarding rates of rent, provides "all contracts for rent, express or implied, shall be enforced." A tenant of dry lands sank a well at his own cost and thereafter cultivated the land with garden crops. Prior to the sinking of the well the tenant had always paid a uniform rent on a dry basis; subsequently the landlord claimed, and the tenant for some years paid, an enhanced rent, namely, at the garden crop rate. In a suit by the tenant to obtain pattas at the usual dry rate: *Held,* that there was an implied contract to pay rent at the dry rate and that there was no consideration to support an implied contract to pay at the enhanced rate; further, that to construe the original contract as a contract to pay at the dry rate only so long as the land remained dry, having the subsequent rent to depend upon the produce, would be repugnant to the Act. JAGAVEERA RAMA ETTAPPA *v.* ARUMUGAM CHETTI (1918). . . **L. R. 45 I. A. 195**

MADRAS REVENUE RECOVERY ACT (II OF 1864).

———— **s. 59**—*Sale of a minor's ryotwari landholder's lands for arrears of revenue, validity of—Madras Regulation (X of 1831), s. 2—Wrong entry of minor's mother as pattadar instead of minor, effect of—Suit to set aside revenue sale more than six months after sale, whether barred by limitation.* On the death of a ryotwari landholder, the Revenue authorities erroneously registered his widow as the pattadar instead of the plaintiff, his minor adopted son. Default in payment of revenue having occurred, the lands were sold for arrears of revenue during plaintiff's minority and he then sued to set aside the revenue sale and recover the lands within

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*concld.*

——— s. 59—*concld.*

twelve years of the sale but more than six months after attaining majority. *Held* by the Full Bench, (*a*) that s. 2 of Madras Regulation X of 1831 which prohibits the sale for arrears of revenue of minor's properties applies to all lands of minors whether permanently settled or only ryotwari, whether the lands be considerable or so small as not to be taken charge of by the Court of Wards; (*b*) that the sale being *ultra vires*, the special period of limitation of six months prescribed by s. 59 of the Madras Revenue Recovery Act (II of 1864) did not apply to the suit; and (*c*) that the fact that the Revenue authorities mistakenly registered the plaintiff's adoptive mother as pattadar did not in any way affect him. *Krishna* v. *Mekam Peruma, I. L. R. 10 Mad. 44*, considered. *Subramania Chetty* v. *Mahalingasami Sivan, I. L.R. 33 Mad. 41*, distinguished. *Seecretary of State* v. *Ashtamurthi, I. L. R. 13 Mad. 89*, followed. SWAMINATHA AYYAR *v.* GOVINDASAWAMI PADAYACHI (1918).
I. L. R. 41 Mad. 733.

MADRAS SALE OF MINORS' ESTATES REGULATION (X OF 1831).

See MADRAS REVENUE RECOVERY ACT (II OF 1864) . **I. L. R. 41 Mad. 733**

MADRAS TOWNS' NUISANCES ACT (MAD. III OF 1889).

——— ss. 6 and 7—
I. L. R. 41 Mad. 644

MAGISTRATE.

——— duty of—
See COMPROMISE.
I. L. R. 45 Calc. 816

MAHOMEDAN LAW. **Col.**

DIVORCE 203
DOWER 204
GIFT 204
INHERITANCE 204
MAINTENANCE 204
MARRIAGE 205
MUTWALI 206
PRE-EMPTION 206
RELIGIOUS OFFICE . . . 206
RESTITUTION OF CONJUGAL RIGHTS . 207
WAKF 207

See CONTRACT . **I. L. R. 42 Bom. 499**
See CUSTOM . **I. L. R. 45 Calc. 450**

MAHOMEDAN LAW—DIVORCE.

——— *Post-nuptial agreement by husband not to take another wife and delegation to wife of power of divorce on breach—Validity—Breach of agreement, followed by husband's suit for restitution of conjugal rights—Divorce given after suit by wife, if valid.* A post-nuptial delegation of the power of divorce is valid under Mahomedan law. Where by a *kabinnamah* executed after the marriage, the husband undertook not to take a second wife without the wife's permission and delegated to her the power of "giving three *talaqs*" in cases of violation of the said amongst other condition

MAHOMEDAN LAW—DIVORCE—*concld.*

"whenever she chose," and afterwards having taken a second wife without the first wife's permission used the latter for restitution of conjugal rights, whereupon she gave herself the three divorces according to Mahomedan law. *Held*, that the authority to divorce was validly given and exercised and the suit must fail. SAINUDDIN *v.* LATIFENNESSA BIBI (1918) . **22 C. W. N. 924**

MAHOMEDAN LAW—DOWER.

——— *Dower, relinquishment of, by a Mahomedan woman at the age of 15, whether valid—Indian Majority Act (IX of 1875), s. 2—'act in the matter of dower,' meaning of—Indian Contract Act, s. 11.* A relinquishment of her right to dower by a Mahomedan woman, who is a minor under the Indian Majority Act, is invalid under the Indian Contract Act (IX of 1872) To relinquish dower is not 'to act in the matter of dower' within s. 2 of the Indian Majority Act ABI DHUNIMSA BIBI *v.* MUHAMMAD FATHI UDDIN (1917) . . . **I. L. R. 41 Mad. 1026**

MAHOMEDAN LAW—GIFT.

1. ——— *Gift made during his last illness by a son to his mother—Marz-ul-maut—Application of doctrine.* On a question of the application of the doctrine of *marz-ul-maut* to a disposition of property made by a Mahomedan during his last illness, if the transaction is a sale the doctrine would not apply at all; if the transaction is a waqf, it would be valid to the extent of one-third; while if it is a gift, it would not be valid at all. In the case before the Court the particular transaction was held on the facts to be really a gift, to one of the heirs (the mother of the donor) and therefore invalid, although in form it purported to be a sale. FAZL AHMAD *v.* RAHIM BIBI (1917) . . . **I. L. R. 40 All. 238**

2. ——— *Heba-bil-ewaz—Transfer of Property Act (IV of 1882), s. 11.* The ordinary rules applicable to gifts apply to the Mahomedan law like any other system of law and a gift under a *heba-bil-ewaz* is not invalidated by an invalid condition being attached to it. NIAMATANNESSA BIBI *v.* HOSSENUDDIN NAZIR (1918).
22 C. W. N. 512

MAHOMEDAN LAW—INHERITANCE.

——— *Contingent right to inherit, transfer or renunciation of, whether prohibited.* A transfer or renunciation of a contingent right of inheritance is prohibited under Mahomedan Law. *Mussammat Khanum Jan* v. *Mussummat Jan Bee-bee, (1827) 4 S. D. A. 210*, followed. *Kunhi Mamod* v. *Kunhi Moidin, I. L. R. 19 Mad. 176*, considered. *Mussamut Hurmutt-Ool-Nissa Begam* v. *Allahdia Khan Hajee Hidayat, 17 W. R. (P.C.) 108*, explained. ASA BEEVI *v.* KARUPPAN CHETTY (1917) . . . . **I. L. R. 41 Mad. 365**

MAHOMEDAN LAW—MAINTENANCE.

——— *Shafi School—Maintenance, arrears of—Whether recoverable in the absence of a decree or agreement to pay.* According to the Shafi School of Mahomedan Law maintenance is a debt and the wife is entitled to recover from her husband arrears of maintenance though there be no decree of Court or mutual agreement in respect of such maintenance. The distinction in this respect between Shafi and Hanafi school

MAHOMEDAN LAW—MAINTENANCE—*concld.*

pointed out. Mahomedan Law Texts examined. MAHAMED HAJI *v.* KALIMBI (1917).

I. L. R. 41 Mad. 211

MAHOMEDAN LAW—MARRIAGE.

——————— *Validity of Marriage—Guardianship of minor—Power of mother as* de facto *guardian to alienate her minor children's interests in immoveable property so as to bind the infants—Absence of entries in account books as evidence against validity of marriage where regular payments to other wives are shown by other entries—Production at first hearing of suit of documentary evidence relied on by parties—Civil Procedure Code, 1908, O. XIII, r. 1—Practice of Indian Courts in citing decisions of Foreign Courts.* A wealthy Mahomedan died leaving widows, two admittedly his lawful wives and children by each of them, and a third one *Z* who claimed to be his married wife, but the validity of whose marriage was disputed. She had two minor children, and by a deed of 10th June 1906, without having been legally appointed their guardian, she purported to transfer the shares of both herself and her children in the property of the deceased to the plaintiffs who sued for a declaration of the title and status of their vendor, and for a decree for possession of the shares covered by the deed of sale. As to the validity of the marriage of *Z*, entries in the books of account of the deceased tendered in evidence by the contesting defendants (the sharers other than *Z* and her children) showed regular payments to the admittedly lawful wives, but the books contained no entries of payments to *Z*. They were not admitted in evidence by the lower Courts. *Held* by the Judicial Committee (who held the books of account admissible), that there was clear evidence of a reliable character regarding the acknowledgment by the deceased of the children of *Z* as his legitimate issue, which gave rise to a legal presumption of her marriage; and that such presumption was not displaced by the mere inferences, the contesting defendants sought to draw from the absence of entries in her favour in the account books. The marriage was, therefore, valid under the decision in *Mahatala Bibee* v. *Haleemoozaman, 10 C. L. R. 293*, and *Z* and her children were entitled to their shares in the inheritance. *Held*, also, that *Z* had no power to deal with the minors' shares as she had done, and that only her own shares passed under the deed of sale. By Mahomedan Law the mother is entitled only to the custody of the person of her minor child up to a certain age according to the sex of the child. But she is not the natural guardian; the father alone or, if he be dead, his executor (under the Sunni law) is the legal guardian. *Mata Din* v. *Ahmed Ali, I. L. R. 34 All. 213; L. R. 39 I. A. 49*, referred to and discussed. On a review of the provisions and principles of the Mahomedan Law on the question of how far, and under what circumstances, a mother's dealings with the property of her minor child are binding on the infant: *Held*, that one who has charge of the person or property of a minor without being his legal guardian, and who may therefore be conveniently called a "*de facto* guardian," has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant: nor can such transferee, if let into possession of the property under such unauthorised transfer, resist an action in ejectment on behalf of the infant as a trespasser. It follows

MAHOMEDAN LAW—MARRIAGE—*concld.*

that being himself without title he cannot seek to recover property in the possession of another equally without title. *Ayderman Kutti* v. *Syed Ali, I. L. R. 37 Mad. 514*, referred to and commented on. O. XIII, r. 1 of the Civil Procedure Code, 1908, requires the parties or their pleaders to produce at the first hearing of the suit all the documentary evidence of every description in their possession or power "on which they intend to rely." But it does not exclude the discretion of the Court to receive any such documentary evidence at any subsequent stage. Their Lordships of the Judicial Committee deprecated the practice in some of the Indian Courts referring largely to decisions of Foreign Courts to which Indian practitioners could not be expected to have access, which were often based on consideration and conditions totally differing from those applicable to or prevailing in India, and are only likely to confuse the administration of justice. IMAMBANDI *v.* MUTSADDI (1918) . . **I. L. R. 45 Calc. 878**

MAHOMEDAN LAW—MUTWALI.

——————— *Mortgage of the office of a mutwali, if valid and enforceable in law—Such office, if alienable at all.* One Ahadali, a priest of Peer Saheb, mortgaged his right in the office to three persons, and subsequently one of the mortgagees brought a suit against Ahadali's minor son to enforce the mortgage by sale of the mortgaged turn of worship. The latter too brought a suit for getting the mortgage set aside. *Held*, that the office of a priest in such cases is not alienable and therefore the mortgage cannot be enforced. SAHED BUKSH *v.* GOLAM NABI KHANDKAR (1918).

22 C. W. N. 996

MAHOMEDAN LAW—PRE-EMPTION.

——————— *Sale disguised as a lease in order to defeat pre-emption—Device not permissible under the Mahomedan law.* In a suit for pre-emption whether the right is claimed under the Mahomedan law or by virtue of a custom of pre-emption it is the duty of the Court, if the question is raised, to consider and decide whether the transaction in respect of which the claim is brought is or is not in substance a sale, though it may be disguised in some other form, as for instance, in that of a lease. There is no rule of Mahomedan law which renders it permissible for a transaction of sale to be framed as a lease so as to avoid claims for pre-emption. MUHAMMAD NIAZ KHAN *v.* MUHAMMAD IDRIS KHAN (1918).

I. L. R. 40 All. 322

MAHOMEDAN LAW—RELIGIOUS OFFICE.

——————— *Astan—Mujavar—Religious office—Competency of women to hold or succeed to such office—Right to perform fatiha—Rule of Mahomedan Law.* A religious office can be held by a woman under the Mahomedan Law unless there are duties of a religious nature attached to the office which she cannot perform in person or by deputy and the burden of establishing that a woman is precluded from holding a particular office is on those who plead the exclusion. Though there is no general rule of Mahomedan Law prohibiting a woman from holding a religious office, prohibition may arise by local usage or custom. *Imam Bee* v. *Molla Kahsim Sahib, (1916) 5 L. W. 226*, followed. *Shahoo Banoo* v. *Aga Mahomed Jaffer Bindaneem, I. L. R. 34 Calc. 118*, referred to.

MAHOMEDAN LAW—RELIGIOUS OFFICE— *concld.*

Held (on the facts of the case), that a woman was competent to succeed to the office of Head Mujavar of the suit Astan. MUNNAVARU BEGAM SAHIBU *v.* MIR MAHAPALLI SHAHIB (1918).

I. L. R. 41 Mad. 1033

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.

——— *Suit for restitution of conjugal rights—Defence to suit—Cruelty.* In a suit by a Mahomedan husband against his wife, for restitution of conjugal rights it was found on issues remitted by the High Court that there was no very satisfactory evidence of actual physical cruelty, but that the parties were on the worst possible terms, and the reasonable presumption was that the suit was brought for the purpose of getting possession of the defendant's property. There had been a good deal of ill-treatment short of physical cruelty, and the court was of opinion that by a return to her husband's custody the defendant's health and safety would be endangered. In these circumstance, the High Court refused to interfere with the decree of the Court below dismissing the suit. *Armour* v. *Armour, 1 A. L. J. 318,* referred to. HAMID HUSSAIN *v.* KUBRA BEGAM (1918) . . . **I. L. R. 40 All. 332**

MAHOMEDAN LAW—WAKF.

——— *Wakf, validity of—Determining test—Annuity to destitute illegitimate daughter of founder's husband, if charitable gift.* Where under a waqf a certain protion of the property was to go for objects religious and charitable but the main object was the benefit of the daughter of the settler and her successors. *Held,* that in the circumstances of the case the dominating purpose and intention of the grantor, which is the true test in such cases, was not to provide for charities. That although the deed might not be wholly good, it was competent for the Court to declare the charitable trusts constituted by the document to form a valid charge on the property. That the annuity to an illegitimate daughter of the founder's husband who was destitute and unprovided was a charitable gift. KARIMUNNESSA CHOUDHRANI *v.* EKINA BANOO (1917) . . . **22 C. W. N. 568**

MAINTENANCE.

See MAHOMEDAN LAW—MAINTENANCE.

I. L. R. 41 Mad. 211

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 41.

I. L. R. 40 All. 135.

——— **suit relating to**

See PROVINCIAL SMALL CAUSE COURTS (ACT IX OF 1887), SCH. II. ART. 38.

I. L. R. 40 All. 52

——— *Provincial Small Cause Courts Act (IX of 1887), Art. 41—Decree for maintenance against three persons, two of whom were made liable only in case of default by the third—Suit to recover proportionate amount of payments made—Suit cognizable by a Court of Small Causes.* A decree was passed against three brothers for payment of a maintenance allowance to the widow of a fourth brother deceased. It was, however, provided by the decree that one of the three, Ant Ram, should alone be primarily liable for payment of the allowance, and the others only in case of default being

MAINTENANCE—*concld.*

made by Ant Ram. Ant Ram, having made certain payments, sued to recover a proportionate part thereof from the other brothers. *Held,* that the suit was not one for contribution; but was a suit cognizable by a Court of Small Causes. *Mavula Ammal* v. *Mavula Maracoir, I. L. R. 30 Mad. 212,* and *Ramaswami Pantulu* v. *Narayanamoorthy Pantulu, 14 Mad. L. J. 480,* followed. *Fatima Bibi v. Hamida Bibi, 13 A. L. J. 452,* referred to. ANT RAM *v.* MITHAN LAL (1917).

I. L. R. 40 All. 135

MAJORITY ACT (IX OF 1875).

——— **s. 2—**

See MAHOMEDAN LAW—DOWER.

I. L. R. 41 Mad. 1026

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD. I OF 1900).

See CUSTOMARY LAW OF SOUTH KANARA.

I. L. R. 41 Mad. 118

MALABAR LAW.

1. ——— *Karnavan appointed by family karar—Right of other members to remove such karnavan by suit, for misconduct. Held* by the Full Bench, that a person appointed as *karnavan* of a *tarwad* by an agreement (*karar*) of the members of the *tarwad* is liable to be removed for gross misconduct by a suit at the instance of the other members. *Cheria Pangi Achan* v. *Unnalachan, (1917) Mad. W. N. 185,* explained. CHINDAN NAMBIAR *v.* KUNHI RAMAN NAMBIAR (1918).

I. L. R. 41 Mad. 577

2. ——— *Right of a member of a tarwad to separate maintenance—Female member marrying under Malabar Marriage Act (IV of 1896)—Act whether bar to her claim for maintenance from tarwad.* The right of every member of a Malabar tarwad to be maintained out of the tarwad property is based on his or her right as a co-proprietor in the same and a female member of the tarwad is not deprived of such right by reason of her marriage under the provisions of the Malabar Marriage Act (IV of 1896). AMMANI AMMA *v.* PADMANABHA MENON (1918).

I. L. R. 41 Mad. 1075

MALABAR MARRIAGE ACT (IV of 1896).

See MALABAR LAW.

I. L. R. 41 Mad. 1075

MANAGER AND DIRECTOR OF NEWSPAPER COMPANY.

——— **liability of—**

See CONTEMPT OF COURT.

I. L. R. 45 Calc. 169

MANAGING MEMBER.

See HINDU LAW—JOINT FAMILY.

I. L. R. 45 Calc. 733

MARRIAGE.

See CHRISTIAN MARRIAGE ACT (XV OF 1872), SS. 3, 68.

I. L. R. 40 All. 393

MARRIAGE.

——— **validity of—**

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 45 Calc. 878

MARRIAGE-BROKAGE AGREEMENT.

See CONTRACT ACT (IX OF 1872), SS. 23 65 . . **I. L. R. 41 Mad. 197**

MARRIED WOMAN.

See ABDUCTION . **I. L. R. 45 Calc. 641**

MARZ-UL-MAUT.

See MAHOMEDAN LAW—GIFT. **I. L. R. 40 All. 238**

MATRIMONIAL CAUSES ACT, 1857 (20 & 21 VICT. C. 85).

——— **s. 28—**

See DIVORCE . **I. L. R. 45 Calc. 525**

MEDICINAL PREPARATION.

See EXCISABLE ARTICLE. **I. L. R. 45 Calc. 82**

MEMORANDUM OF APPEAL.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 115, 151, O. XLI, R. 23. **I. L. R. 42 Bom. 363**

MEMORANDUM OF APPEAL.

——— **order returning—**

See CIVIL PROCEDURE CODE (1908), O. XLIII, R. 1 . **I. L. R. 40 All. 659**

MERCHANT SHIPPING ACT (57 & 58 VICT. C. 60).

See HIGH SEAS . **I. L. R. 42 Bom. 234**

MESNE PROFITS.

See CIVIL PROCEDURE CODE (1908), S. 11, EXPL. V; O. XX, R. 12. **I. L. R. 40 All. 292**

——— **decree for—**

See EXECUTION OF DECREE. **I. L. R. 40 All. 211**

——— **suit for, of a grove—**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 31. **I. L. R. 40 All. 142**

MINERAL RIGHTS.

See LEASE, CONSTRUCTION OF. **I. L. R. 45 Calc. 87**

MINING LEASE.

See LANDLORD AND TENANT—LEASE. **L. R. 45 I. A. 275**

MINOR.

See ARMS ACT (XI OF 1878), S. 19 (*f*). **I. L. R. 40 All. 420**

See CONTRACT ACT (IX OF 1872), S. 65. **I. L. R. 40 All. 558**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 44 . **I. L. R. 42 Bom. 626**

See LIMITATION ACT (IX OF 1908), SCH. I. ART. 91 . **I. L. R. 42 Bom. 638**

See PARTNERSHIP. **I. L. R. 40 All. 446**

——— **interest of—**

See EXECUTOR . **I. L. R. 45 Calc. 538**

——— **suit for partition, on behalf of—**

See HINDU LAW—PARTITION. **I. L. R. 41 Mad. 442**

MINOR—*concld.*

——— *Minor liability of, when ancestral trade carried on on his behalf—Contract Act (IX of 1872), s. 247—Interest, not contracted for and not recoverable under the Interest Act (XXXII of 1839), allowed as damages.* A minor on whose behalf an ancestral trade is carried on is not personally liable for debts incurred in such business. The liability of such a minor is not greater than that of a minor admitted to a partnership as laid down by s. 247 of the Contract Act. The amount due having been ascertained and a *mobloghandi* signed by the defendants. *Held*, that though no contract to pay interest was proved and the case was not covered by the Interest Act, some interest should be allowed by way of damages for the detention of the money. KHETRA MOHAN PODDAR *v.* NISHI KUMAR SHAHA (1910). **22 C. W. N. 488**

MINORITY.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182 (*6*); S. 7. **I. L. R. 40 All. 630**

See TITLE, PROOF OF. **I. L. R. 45 Calc. 909**

MIRASDAR.

See KADIM INAMDAR. **I. L. R. 42 Bom. 112**

MISDIRECTION.

——— *Confession—Instructions to Jury to consider non-confessional statements against co-accused—Direction to consider question of admissibility of confessions—Duties of Judge and Jury as to mode of dealing with confessions—Use in the charge to the Jury of expressions assuming guilt of the accused, and of slang terms—Discovery—Admissibility of part of information leading to discovery—Verification of confessions—Oral evidence of unrecorded confessions made in verification proceedings—Misdirection in placing before Jury information not leading to discovery and such unrecorded confessions—Criminal Procedure Code (Act V of 1898), ss. 164, 298—Evidence Act (I of 1872), ss. 24, 27, 30.* It is a misdirection, which must have misled the Jury, to instruct them to take into consideration statements not amounting to confessions by an accused as against the co-accused. It is a misdirection to put to the Jury and to leave it to them to determine whether a confession to a Magistrate, and how much of a confession to the police, are admissible. It is the duty of the Judge to determine the question of the admissibility of evidence, in accordance with the law on the subject, and of the Jury to estimate the value of such evidence after its admission by the Judge. The Judge should avoid the use, in the charge to the Jury, of interrogative expressions assuming the guilt of the accused, such as "*Is not this*," or "*Does not that*," and of slang and colloquial phrases. S. 27 of the Evidence Act qualifies not only ss. 25 and 26 but also s. 24. *Queen-Empress* v. *Babu Lal, I. L. R. 6 All. 509*, approved. Though the accused has himself produced the stolen articles, so much of his anterior statements as led to the discovery are admissible under s. 27 of the Evidence Act, but not statements contemporaneous with the act of production, such as "*I got these ornaments as my share in the dacoity.*" *Queen-Empress* v. *Nana, I. L. R. 14 Bom. 260*, and *Legal Remembrancer* v. *Chema Nashya, I. L. R. 25 Calc. 413*, referred to. S. 27 does not render admissible the whole history of the investigation, or an account of the various steps by

MISDIRECTION—*concld.*

which the police obtained and worked up clues and finally succeeded in arresting the accused. Under the section the whole of the statement of an accused is not admissible, but only so much as led directly to the discovery or related directly to the fact discovered. *Per* SHAMSUL HUDA, *J.* If a single statement contains more information than is contemplated by s. 27, the whole statement is not admissible but only the particular information which led to the discovery. Where an accused states to the police that he killed *A* with a knife and concealed the corpse at a particular place, the only part of the information admissible under the section is that relating to the concealment and not the murder. *Queen-Empress* v. *Babu Lal, I. L. R. 6 All. 509*, followed. *Per* TEUNON, *J.* Verification proceedings are not wholly illegal, and may be useful in testing the truth of the confession, *e.g.*, as to the accused's knowledge of the localities he has mentioned, or as furnishing clues to a further inquiry. *Per* SHAMSUL HUDA *J.* Verifications in the company of the accused lead to very great abuses and should be avoided, though a verification independently of, and unaided by, the accused, is unobjectionable. *Held per* CURIAM. In connection with such proceedings, the Courts must ensure against the reception of evidence not strictly admissible. Statements to the verifying Magistrate, when not recorded in the manner provided by s. 164 of the Ciriminal Procedure Code, are inadmissible and cannot be proved orally by such Magistrate. *Emperor* v. *Radhe Halwai, 7 C. W. N. 220, King-Emperor* v. *Rajani Kanto Koer, 8 C. W. N. 22, Queen-Empress* v. *Bhairab Chunder Chuckerbutty, 2 C. W. N. 702*, and *Queen-Empress* v. *Viran, I. L. R. 9 Mad. 224*, followed. *Per* SHAMSUL HUDA *J.* Even if the statements are recorded after the verification is completed, it would be difficult to hold that they were voluntary. AMIRUDDIN AHMED *v.* EMPEROR (1917).

I. L. R. 45 Calc. 557

MISJOINDER.

See MISJOINDER OF PARTIES.

See CIVIL PROCEDURE CODE (1908), O. I, R. 3; O. XXIII, R. 1.

I. L. R. 40 All. 7

——— *Parties—Appeal—Causes of action—Practice—Judgment—Civil Procedure Code (Act V of 1908) O. I, rr. 1 and 3; O. II, r. 3—Letters Patent, 1865, cl. 15.* An appeal lies, under the Letters Patent, from an order of the High Court on its Original Side, refusing to allow plaintiff to proceed in one suit against several defendants on the ground of misjoinder and giving him time to elect how he would proceed with his suit and which of the defendants he would retain on the record. O. I, r. 1 and O. I, r. 3 of the Civil Procedure Code apply to questions of joinder of parties as also of causes of action. *Umabai* v. *Bhau Balwant, I. L. R. 34 Bom. 358*, and *Jankibai* v. *Shrinivas Ganesh, I. L. R. 38 Bom. 120*, dissented from. The plaintiff brought a suit against four sets of defendants for the recovery of certain documents of title and the goods covered thereby and in the alternative for damages. In his plaint he alleged that the goods in suit were his property, that the defendant No. 1 obtained from him the documents of title relating thereto by fraud and made them over to defendant No. 2; that defendant No. 2, knowing that defendant No. 1 had no title either to the documents or to the goods wrongfully

MISJOINDER—*concld.*

dealt with them and sold the goods to defendants Nos. 3 and 4: that defendants Nos. 3 and 4 wrongfully claimed to retain the goods and the documents of title; and, lastly, that one of the documents of title, *viz.*, a railway receipt was pledged by defendant No. 1 to defendant No. 5 though the goods covered by it were in the possession of defendant No. 3. *Held*, that the suit was not bad for misjoinder of parties and causes of action. RAMENDRA NATH ROY *v.* BRAJENDRA NATH DASS (1917). **I. L. R. 45 Calc. 111**

MISJOINDER OF CHARGES.

See PENAL CODE (ACT XLV OF 1860), S. 408 . . **I. L. R. 40 All. 565**

MISREPRESENTATION.

See COMPANY . **I. L. R. 42 Bom. 264**

MITAKSHARA.

See HINDU LAW—JOINT FAMILY.
I. L. R. 45 Calc. 666, 733

See HINDU LAW—JOINT FAMILY.
I. L. R. 40 All. 159

See HINDU LAW—WIDOW.
I. L. R. 40 All. 96

MOKARARI LEASE.

See LEASE, CONSTRUCTION OF.
I. L. R. 45 Calc. 87

MONEY-DECREE.

See EXECUTION OF DECREE.
I. L. R. 45 Calc. 530

——— **execution of—**

See LIMITATION.
I. L. R. 45 Calc. 630

MORTGAGE.

	Col.
1. ATTESTATION	213
2. CONSTRUCTION	213
3. DISCHARGE	214
4. IN FAVOUR OF MINORS . .	215
5. OF GOODS	215
6. PRIOR MORTGAGE . . .	215
7. REDEMPTION	216
8. SALE OF MORTGAGED PROPERTY .	216
9. TRANSFEREE-MORTGAGEE . .	219

See MORTGAGE DEED.

See MORTGAGE SUIT.

See USUFRUCTUARY MORTGAGE.

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898), SS. 45, SUB-SS. (*1*), (*6*).
L. R. 45 I. A. 179

See CIVIL PROCEDURE CODE (1908), S. 11 EXPL. V . **I. L. R. 40 All. 584**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 6.
I. L. R. 40 All. 551, 553

See COMPANY . **I. L. R. 42 Bom. 215**

See CONSIDERATION.
I. L. R. 45 Calc. 774

See EVIDENCE, ADMISSIBILITY OF.
I. L. R. 45 Calc. 320

MORTGAGE—*contd.*

See HINDU LAW—ALIENATION.
I. L. R. 40 All. 171

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 126, 144, 148.
I. L. R. 41 Mad. 650

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 181 . **I. L. R. 40 All. 235**

See OCCUPANCY RAIYAT.
I. L. R. 40 All. 228

——— **by conditional sale—**

See REGULATION XVII OF 1806, S. 8.
I. L. R. 40 All. 387

——— **redemption of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 148 . **I. L. R. 40 All. 683**

——— **suit on a—**

See AMENDMENT OF PLAINT.
I. L. R. 45 Calc. 305

1. ATTESTATION.

——— *Transfer of Property Act (IV of 1882), s. 9—Execution of mortgage by pardanashin lady, attestation of —Requirements as to identity of executant and as to witnesses seeing actual execution of deed—Acknowledgment of her signature by executant.* On a question whether a mortgage sued upon had been properly attested under the provisions of s. 59 of the Transfer of Property Act (IV of 1882), the evidence showed that the attesting witnesses had not, though present, seen the executant (a *pardanashin* lady) sign the deed, but had subsequently to the execution received from her son, who had been with her on the other side of the *pardah*, an acknowledgment that the signature on the deed had been made by his mother. *Held* (reversing the judgment of the High Court), that the requirements of s. 59 had not been complied with, and the deed was, therefore, invalid as a mortgage. *Shamu Patter* v. *Abdul Kadir Ravuthan I. L. R. 35 Mad. 607; L. R. 39 I. A. 35,* and *Padarath Halwai* v. *Ram Nain Upadhia, I. L. R. 37 All. 474; L. R. 42 I. A. 163,* distinguished. GANGA PERSHAD SINGH *v.* ISHRI PERSHAD SINGH (1918) . . . **I. L. R. 45 Calc. 748**

2. CONSTRUCTION.

1. ——— *Mortgage—Prior mortgagee who had obtained a decree absolute for sale but had not executed it—Decree barred under Sch. II, Art. 179, of Limitation Act, 1877—Subsequent mortgagee not made a party to suit under s. 85 of Transfer of Property Act, 1882—Registered later mortgage as notice to prior mortgagee—Suit to enforce later mortgage—Prior mortgagee's right merged in decree and extinguished—Transfer of Property Act, s. 89, construction of.* The question in this appeal was whether property mortgaged to the respondent on the 15th of October, 1881, should, when sold, under a decree absolute for sale, be treated as sold subject to an alleged prior right of the appellant under an earlier mortgage of the same property, dated the 25th of February, 1880. The appellant, in 1883, acquired the title of the mortgagor, and also such title as remained to the mortgagee, under the earlier mortgage. In 1892, the prior mortgagee brought a suit on his mortgage and in 1895 obtained a decree absolute for sale under the Transfer of

MORTGAGE—*contd.*

2. CONSTRUCTION—*concld.*

Property Act. The suit was, however, only against the mortgagor, and the second mortgagee, was not made a party to it. Neither, the prior mortgagee nor his successor took any steps to execute that decree, and it became barred and inoperative after the lapse of three years from the date on which it became absolute. It was admitted that the later mortgage was duly registered, and that the earlier mortgagee must be taken to have had notice of it when he brought his suit and obtained a decree in 1892. *Held,* in a suit brought on the 26th of July, 1910, by the first respondent on his mortgage of the 15th of October, 1881, against, among others, the appellant, that respondent was entitled to a decree absolute under O. XXXIV, r. 2, of the Code of Civil Procedure, 1908, for sale, but that the sale, was not subject to the prior mortgage of the appellant. The true construction of s. 89 of the Transfer of Property Act is that on the making of the order absolute for sale under that section, the security as well as the defendant's fright to redeem were both extinguished, and that for the right of the mortgagee under his security there was substituted the right to a sale conferred by the decree. HET RAM *v.* SHADI RAM (1918).
I. L. R. 40 All. 407

2. ——— *Mortgage Bond—Rice lent—Covenant of repayment—Mortgagees to realise money in case of default by sale of mortgaged properties—Suit on mortgage bond, whether a suit for recovery of money charged on mortgaged properties.* Where, in a suit to enforce a mortgage, the plaintiffs lent a certain amount of rice and there was in the bond the usual covenant of repayment and interest and the bond also provided that, if default was made in the *kists*, the mortgagees would be competent to realise the money which would be due at the rate of Rs. 6 per "map," by sale of the mortgaged properties belonging to the mortgagors. *Held*, that the primary object of the suit was to recover money and what the Court would give the plaintiffs would be money and not rice if they succeeded in the suit and that that money was a charge on the mortgaged property. *Held*, also, each case must turn on the construction that the Court places on the mortgage-deed in that particular case. SRIPATI LALL DUTT *v.* SARAT CHANDRA MONDAL (1918) . . **22 C. W N. 790**

3. DISCHARGE.

——— *Co-mortgagees—Payment by mortgagor to one of them who gives him full discharge—Other mortgagees if bound by it—Effect on the interest of mortgagee who gave the discharge.* Payment to one of several joint creditors does not necessarily operate as a discharge of the debt in so far as the other creditors are concerned. In the absence of any evidence or circumstances which would justify a contrary inference, it will be presumed notwithstanding the form of the obligation that a debt due to a number of joint creditors is due to them in severalty. Where after relations between co-mortgagees had become strained, one of them acknowledged receipt of payment from the mortgagor and gave the latter a discharge in respect of the mortgage-debt: *Held*, that the discharge operated as a valid discharge in respect only of the share of the mortgage money due to the co-mortgagee by whom it was given. HAKIM *v.* ADWAITA CHANDRA DAS DALAL (1918) . **22 C. W. N. 1021**

MORTGAGE—*contd.*

4. IN FAVOUR OF MINORS.

——————— *Mortgage, if void because executed in favour of minors.* The plaintiffs executed a mortgage in favour of the defendants who were minors at the time. The defendants sued on the mortgage, had the property sold in execution of their decree and purchased it themselves. They were of full age when the suit was brought. The plaintiff sued to have it declared that the mortgage-bond was void and to have the decree and the sale set aside. *Held*, that the defendants were entitled to enforce the mortgage which was not void simply because of their minority at the time of its execution. That the case was not concluded by the decisions of the Judicial Committee in *Mohori Bibi* v. *Dharmadas Ghosh, I. L. R. 30 Calc. 539 : 7 C. W. N. 441*, and *Mir Sarwarjan* v. *Fakhruddin Mahomed, I. L. R. 39 Calc. 232 : 16 C. W. N. 74*, inasmuch as there was no covenant which it was for the minors to perform. HARI MOHAN MONDAL *v.* MOHINI MOHAN BANERJEE (1916) . . . . **22 C. W. N. 130**

5. OF GOODS.

——————— *Mortgage, equitable, of loose chattels—Indian Contract Act (IX of 1872), s. 172, if prohibits such hypothecation—Equitable mortgage of land—Fixtures if pass to mortgagee—Letter written by mortgagor stating purpose of deposit of title-deed, if must be registered as a document of mortgage—Transfer of Property Act (IV of 1882), s. 59.* There is nothing in the Indian Contract Act which contains only a portion of the law of contract applicable in British India, to prevent a person from hypothecating his goods to another person for security. As between mortgagor and mortgagee, the law is settled that fixtures pass with the land to the mortgagee. A letter written by the mortgagor to the mortgagee stating the purpose for which the title-deed has been deposited with the latter is not a document requiring registration under the provisions of the Indian Registration Act as being a mortgage. HARIPADA SADHUKHAN *v.* ANATH NATH DE (1918) . . **22 C. W. N. 758**

6. PRIOR MORTGAGE.

——————— *Mortgage—Suit and decree by prior mortgagee without impleading puisne mortgagee—Purchase of mortgage property by prior mortgagee in execution—Receipt of rents and profits thereafter—Mode of accounting between the two mortgagees.* A mortgagee decree obtained by a prior mortgagee without impleading a puisne mortgagee does not effect the latter and the amount therefore payable by the latter in discharge of the prior mortgage is not the amount of the decree but that which is due on the footing of the prior mortgage as if no suit had been brought; and if the prior mortgagee buys the mortgage property in execution of his decree and gets possession of the same the rents and profits received by him cannot be set off as equivalent to the interest due for the period of possession, but must be accounted for and deducted from the amount payable by the puisne mortgagee. *Umes Chunder Sircar* v. *Zahur Fatima, I. L. R. 18 Calc. 164*, and *Ganga Pershad Sahu* v. *The Land Mortgage Bank of India, I. L. R. 21 Calc. 366*, applied. *Syed Ibrahim Sahib* v. *Armugathayee, I. L. R. 38 Mad. 18* considered. MUTHAMMAL *v.* RAZU PILLAI (1917) . . . **I. L. R. 41 Mad. 513**

MORTGAGE—*contd.*

7. REDEMPTION.

1. ——————— *Mortgage by conditional Sale—Mortgagor in possession as tenant of mortgagee—Rent in arrear—Suit for rent—Decree for rent barred by limitation—Suit for redemption—Mortgagee, whether entitled to claim arrears of rent and interest decreed as part of price of redemption—Abandonment of charge—Election of remedies.* In a suit for redemption, the mortgagee is not entitled to claim any arrears of rent with interest thereon in respect of the mortgaged lands which were left in the possession of the mortgagor as tenant of the mortgagee under the terms of the mortgage-deed, when the mortgagee has already sued and obtained a decree for such rent with interest and has allowed the decree to become barred by limitation, even though the arrear of rent is a charge under the deed. English and Indian cases reviewed. *Hewanchal Singh* v. *Jawahir Singh, I. L. R. 16 Calc. 307*, distinguished. *Imdad Hasan Khan* v. *Bachu Prasad, I. L. R. 20 All. 401*, referred to. NARAINA RAO *v.* SHIVU RAO (1918).
I. L. R. 41 Mad. 1043

2. ——————— *Redemption—Partial owner of equity of redemption, if can redeem whole mortgage.* A partial owner of the equity of redemption is entitled to redeem the whole mortgage. BAIKANTHA NATH DAS *v.* MOHESH CHANDRA DEY (1916) . . . **22 C. W. N. 128**

3. ——————— *Redemption—Partial owner of equity of redemption, if can redeem the whole of the mortgaged property.* A partial owner of the equity of redemption is entitled to redeem the whole of the mortgaged property. PROTAP CHANDRA DHAR *v.* PEARY MOHAN DHAR (1918).
22 C. W. N. 800

4. ——————— *Mortgage suit—Purchaser of mortgaged property, applying to be made a party, not allowed on plaintiff's objection—Subsequent suit by purchaser at mortgagee's sale to recover possession—Right of previous purchaser to redeem.* Where an application by a purchaser, *A*, of mortgaged property to be made a party in the mortgage suit was on the mortgagee's objection refused and he was thus prevented from exercising the right of redemption amongst other reliefs which he desired to claim. *Held*, that in a suit by the purchaser at the sale in execution of the mortgage decree, *B*, to recover the property from *A* who was in possession, *A* was entitled to redeem *B*. REBATI MOHAN DAS *v.* NADIABASHI DE (1918).
22 C. W. N. 543

8. SALE OF MORTGAGED PROPERTY.

1. ——————— *Second mortgage-debt secured by sureties—Assignment of equity of redemption to sureties—Sub-mortgage by sureties in favour of assignor—Sale of mortgaged property by prior mortgagee—Subsequent sale by sub-mortgagee—Ramainder of mortgaged property in existence and available for sale insufficient to satisfy sub-mortgagee's debt—Application for personal decree against sub-mortgagors—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 6.* The plaintiffs, who were the mortgagees of the equity of redemption in respect of certain properties, further secured their mortgage debt by a promissory note executed in their favour by two sureties on behalf of the mortgagor. They subsequently assigned their equity of redemption to the sureties, who executed a sub-mortgage there-

MORTGAGE—*contd.*

8. SALE OF MORTGAGED PROPERTY—*contd.*

of in favour of the plaintiffs. Some time after, the plaintiffs obtained a preliminary mortgage decree, which was later followed by a final decree directing that the premises charged under the mortgage, or a sufficient part thereof should be sold subject to the prior mortgage. In the meantime between the dates of the preliminary and final decrees, the mortgagor having been adjudicated an insolvent, the prior mortgagee obtained an order of the Court exercising insolvency jurisdiction, that the zemindari properties included in the prior mortgage should be sold free from all incumbrances, and that the balance of the sale-proceeds, after payment of the costs of the sale and the claim of the prior mortgagee, should be retained by the Official Assignee and be paid by him in discharge of other incumbrances in accordance with their respective priorities. The sale was duly carried out by the Official Assignee in pursuance of this order. The amount thus realised was not sufficient to meet the debt of the prior mortgagee. Subsequently, in pursuance of the mortgage decree, the Registrar put up for sale the equity of redemption in certain properties specified in the plaintiffs' mortgage and remaining unsold at the sale by the Official Assignee, and as the amount realised at the Registrar's sale was not sufficient to meet the plaintiffs' debt, the plaintiffs applied for and obtained a personal decree against the sub-mortgagors for the amount of their claim. *Held*, that the plaintiffs' claim for a personal decree was not debarred. *Per* SANDERSON, *C. J.* Having regard to the fact that all the properties covered by the mortgage, which were in existence and which were available for sale at the date of the sale, were sold (by the Registrar), and assuming that the plaintiffs were not responsible for the fact that some of the properties included in the mortgage were not in reality available for sale, though the sale purported to include them, I think it should be taken that the provisions contained in the rules and the directions contained in the mortgage decrees as to the sale have been complied with, and that the plaintiffs are entitled to the personal decree which the learned Judge has directed. *Ram Ranjan Chakravarti* v. *Indra Narain Dass, I. L. R. 33 Calc. 890*, and *Badri Das* v. *Inayat Khan, I. L. R. 22 All. 404*, distinguished. *Per* WOODROFFE, *J.* We must look at this matter rationally and with reference to the reason of the rule, namely, that the personal liability will only be enforced where there is a deficiency after the sale of all the mortgaged property available for sale at the date of sale. In other words, the personal liability must not be improperly increased. SATISH RANJAN DAS *v.* MERCANTILE BANK OF INDIA, LD. (1917) . **I. L. R. 45 Calc. 702**

2. ——— *Suit for sale of mortgaged property—Decree not in accordance with s. 88, Transfer of Property Act (IV of 1882)—Sale in execution of decree—Confirmation of sale—Purchase by mortgagee at auction sale with leave of the Court—Right of redemption by mortgagor—Suit to redeem against auction-purchaser—Parties—Civil Procedure Code (Act XIV of 1882), s. 244—Question in execution of decree.* In a suit to enforce a mortgage and for sale of the mortgaged property the decree made was not in accordance with the provisions of s. 88 of the Transfer of Property Act (IV of 1882), no day being fixed by the Court on which payment might be made within six months from

MORTGAGE—*contd.*

8. SALE OF MORTGAGED PROPERTY—*contd.*

the date of declaring in Court the amount due. In execution of the decree the mortgaged property was attached, sold, and purchased, with the leave of the Court by the mortgagee decree-holder, and the sale was duly confirmed. In a suit by the mortgagor for redemption of the mortgage, which was one of ancestral property made by the plaintiff's father before the birth of his sons. *Held*, that whether or not the decree was in accordance with the provisions of the Act, the property, and all the right, title and interest of the defendant were in fact sold in execution of the decree of a Court which had jurisdiction to entertain the suit in which the decree was made, and that decree was not appealed from; and that consequently the mortgagor had no right of redemption. *Held*, further, that the question now raised could have been raised before the sale was confirmed, and, if so raised, would have been determined by the Court executing the decree, and that the suit was therefore barred by s. 244 of the Code of Civil Procedure (Act XIV of 1882). *Prosunno Kumar Sanyal* v. *Kali Das Sanyal, I. L. R. 19 Calc. 683; L. R. 19 I. A. 166*, followed. GANAPATHY MUDALIAR *v.* KRISHNAMACHARIAR (1917).

I. L. R. 41 Mad. 403

3. ——— *Mortgaged property partly sold and partly mortgaged to persons induced by some of the mortgagees themselves to believe property to be free from encumbrance—Estoppel—Interests of co-mortgagees, if severable—Document creating transfer of simple mortgage if compulsorily registrable—Transfer of Property Act (IV of 1882), s. 54—Registration Act (XVI of 1908), s. 17 (b).* In a mortgage suit some of the defendants were purchasers of a portion of the mortgaged property and one had taken a puisne mortgage of the remainder. It appeared that some of the plaintiffs mortgagees led these defendants to believe that the whole property was unencumbered. The lower Court dismissed the suit so far as these plaintiffs were concerned. *Held*, that as regards the defendants who were purchasers of a portion of the mortgaged property the claim of these plaintiffs was rightly dismissed under the rule of estoppel, but as regards the other defendant who was a puisne mortgagee of the remainder of the mortgaged property the effect of the estoppel under s. 78 of the Transfer of Property Act was to postpone these plaintiffs in respect of their share of the original debt to this defendant and the decree should declare that the property mortgaged to this defendant hypothecated to these plaintiffs for their share of the original mortgage debt and their rights as mortgagees were postponed to those of this defendant. That co-mortgagees are presumably tenants in common of the mortgage debt and their interests are severable or partible among themselves and it was open to the Court to sever the interests of those plaintiffs who had taken no part in the deceit practised upon the purchaser from those who did, and to make a decree in their favour in proportion to their interest in the debt. That a mortgage debt is immoveable property both for the purposes of s. 54 of the Transfer of Property Act as also for the purposes of s. 17 (*b*) of the Registration Act; and where a mortgage including a simple mortgage is transferred by an instrument in writing and the value of the right, title or interest transferred is one hundred rupees or

MORTGAGE—*concld.*

8. SALE OF MORTGAGED PROPERTY—*concld.*

more the writing requires registration and the absence of registration makes the document inadmissible. SAKHIUDDIN SAHA *v.* SONAULLAH SARKAR (1918). . . . **22 C. W. N. 641**

4. ——— *Mortgage decree directing sale of other properties of judgment-debtor, if sale-proceeds of mortgaged property insufficient—Limitation as to latter part of decree—Civil Procedure Code (Act V of 1908). s. XX, O. 20, r. 6—O. XXXIV, r. 6.* Where a mortgage decree after directing that the available proceeds of the sale to be held under the decree was to be paid in satisfaction of the decretal debt but that if the amount due to the plaintiff was not satisfied by the sale of the mortgaged property the balance would be realised from other properties and the persons of the defendants. *Held,* that limitation for execution of the latter part of the decree did not run from the date of the sale of the mortgaged property, but from the date of the decree as fixed by O. XX, r. 6 of the Civil Procedure Code. KHULNA LOAN COMPANY *v.* JNANENDRO NATH BOSE (1917).

22 C. W. N. 145

9. TRANSFEREE-MORTGAGEE.

——— *Transferee from benamidar—Right of suit.* A transferee-mortgagee can maintain a suit on the mortgage though the mortgagee named in the bond is only a benamidar and though the beneficial owner is not added as a party. *Kritibas Das* v. *Gopal Jiu, 19 C. L. J. 193,* and *Parameshwar Dat* v. *Anardan Dat, I. L. R. 37 All. 113,* followed. SINGA PILLAY *v.* GOVINDA REDDY (1917) . . **I. L. R. 41 Mad. 435**

MORTGAGE BOND.

See EXECUTION OF DECREE.

I. L. R. 45 Calc. 530

MORTGAGE-DEED.

See EVIDENCE ACT (I OF 1872), S. 68.

I. L. R. 40 All. 256

See REGISTRATION ACT (XVI OF 1908) SS. 32, 33, 71, 73, 75, 87, 88.

I. L. R. 40 All. 434

——— **attestation of—**

See PARDANASHIN LADY.

I. L. R. 45 Calc. 748

MORTGAGE SUIT.

1. ——— *Plea of payment—Onus, nature of—Evidence Act (I of 1872), s. 114—Shifting of onus—Trial Judge's estimate of testimony, value of, in doubtful cases.* In a suit to enforce a mortgage bond, in which the defence sought to prove that the debt had been discharged by payments endorsed on the bond, the trial Court, on a review of the evidence, held that the endorsements were fictitious and decided in favour of the plaintiff; but the High Court on appeal was of opinion that the plaintiffs had failed to discharge the burden which rested on him to prove his case and dismissed the suit. *Held* by the Judicial Committee, that though the initial burden of proof rests on the appellant in such a case as this, both on general grounds and by reason of the provisions of s. 114 of the Evidence Act, this burden is one which shifts easily as the evidence is developed, and their Lordships did not attach much importance in this case to the question on whom the initial onus lay.

MORTGAGE SUIT—*concld.*

That the evidence in this litigation, taken as a whole, was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses: and the balance of probabilities in this case also being in their Lordships' opinion on the side of the conclusion reached by the trial Judge the judgment of the High Court was reversed and that of the trial Judge was restored. KUNDAL LAL *v.* BEGAM-UN-NISA (1918).

22 C. W. N. 937

2. ——— *Mortgagee related to mortgagor—Bond executed in consequence of mortgagee becoming aware of the demand by another creditor of mortgagor for repayment of his dues—Mortgage bond, whether fraudulent.* Where the defendants Nos. 1 to 3 executed a mortgage bond in favour of the plaintiff for Rs. 16,000 due to the latter in consequence of the latter having come to know that defendant No. 4, another creditor of the defendants Nos. 1 to 3, was pressing for payment and thereafter defendant No. 4, obtaining a decree against defendants Nos. 1 to 3, purchased the mortgage properties, and then the plaintiff brought the present suit to enforce the security whereupon the defendant No. 4 contended that the mortgage was fraudulent. *Held,* that because the plaintiff was related to defendant No. 2 and was aware of the fact that defendant No. 4 was demanding his dues from defendants Nos. 1 to 3 and was bringing pressure to bear upon them was no reason why the plaintiff should not require the defendants Nos. 1 to 3 to secure the repayment of the money due to him. RASH MOHAN SHAHA *v.* KRISTODAS RAY (1918) . **22 C. W. N. 982**

——— **purchase by, with leave of Court—**

See MORTAGAGE **I. L. R. 41 Mad. 403**

——— **right of, to sue for sale—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 58 (*a*) AND (*d*), 67, 68 (*c*).

I. L. R. 41 Mad. 259

——— **failure of, to deliver possession—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 58 (*a*) AND (*d*), 67, 68 (*c*).

I. L. R. 41 Mad. 259

——— **right of, to redeem property—**

See MORTGAGE . **I. L. R. 41 Mad. 403**

MOTHER.

——— **power of, to alienate minor's property—**

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 45 Calc. 878

MOTOR CAR.

See CONTRACT FOR SALE.

I. L. R. 45 Calc. 481

MOTOR VEHICLE.

——— *Motor Vehicles Act (VIII of 1914)—Rules framed thereunder by Governor-in-Council—rr. 3 and 19—Liability of owner of taxi-cab for rash and negligent driving by his servant.* The owner of a motor vehicle is liable, under Part II, r. 3, of the rules framed by the Governor-in-Council under s. 11 of the Indian Motor Vehicles Act (VIII of 1914), for breach of r. 19 by his licensed driver. Where the driver of a taxi-cab negligently drove the same into a drain causing injury to the passengers in the car: *Held,*

MOTOR VEHICLE—*concld.*

that the owner of the taxi-cab was liable to prosecution and punishment, under s. 16 of the Act read with the aforesaid rr. 3 and 19, for the act of his driver. *Thornton* v. *Emperor, I. L. R. 38 Calc. 415*, followed. BAIDYA NATH BOSE *v.* EMPEROR (1917) . . . . **I. L. R. 45 Calc. 430**

MOTOR VEHICLES ACT (MAD. I OF 1907).

See TORTS . . **I. L. R. 41 Mad. 538**

MOTOR VEHICLES ACT (VIII OF 1914).

——— **rules 3, 19—**

See MOTOR VEHICLES.

I. L. R. 45 Calc. 430

MOVEABLES.

——— **hypothecation of—**

See ADMINISTRATION.

I. L. R. 45 Calc. 653

MUAFI.

——— **resumption of—**

See AGRA TENANCY ACT (II OF 1901), S. 150 . . **I. L. R. 40 All. 656**

See AGRA TENANCY ACT (II OF 1901), SS. 154, 158 . **I. L. R. 40 All. 60**

MUAFI LAND.

See AGRA TENANCY ACT (II OF 1901), SS. 154 AND 158 . **I. L. R. 40 All. 60**

MUKTESAR.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 42 Bom. 742**

MUNICIPAL ACCOUNT CODE.

——— **s. 40—**

See GENERAL CLAUSES ACT (U. P. I OF 1904), S. 24 . **I. L. R. 40 All. 105**

MUNICIPAL ACT, BENGAL (III OF 1884).

———SS. 6 (*4*), 204, 218—"*Patit*" *land adjoining house but not shown as being enjoyed as part of it, if* "*house*"*—Obstruction in front of* "*patit*" *land, if punishable.* In the absence of a definite finding that a piece of *patit* land or orchard adjoining the accused's house was held and engaged along with the house or as part of the premises a heap of broken pottery stacked on the road and in front of the *patit* land or orchard could not be regarded as an obstruction placed against or in front of the accused's house, within s. 204 of the Bengal Municipal Act. BHUSAN CHANDRA DUTTA *v.* CHAIRMAN OF KOTE CHANDPUR MUNICIPALITY (1917).

22 C. W. N. 376

MUNICIPAL ELECTION.

1. ——— *Election Roll—Qualifications of voters—Sitting Commissioner as candidate for election—Objections to voters' claims to be on Election Roll—Chairman's decision refusing to expunge names of voters from the Roll—Jurisdiction of the High Court to interfere—*"*Occupier*"*—Specific Relief Act (I of 1877), s. 45—Calcutta Municipal Act (Beng. III of 1899), ss. 3 (30), 37, 47, and Sch. IV, rr. 3, 8 (1).* The sitting Commissioner for one of the wards in the Calcutta Municipality, who was one of the candidates for election as a Commissioner for that same ward at the forthcoming Municipal election, and who was also a voter on the list of voters in respect of another ward, objected that the names of various persons should not be entered

MUNICIPAL ELECTION—*contd.*

and retained on the Municipal Election Roll for the ward for which he was a candidate. The Chairman of the Corporation having heard the objections, refused to expunge those names from the Election Roll. *Held*, that the High Court had jurisdiction under s. 45 of the Specific Relief Act to interfere in this matter. *In re Nisith C. Sen, I. L. R. 39 Calc. 754*, and *In re Romesh Chandra Sen, 16 C. W. N. 472*, followed. *Held*, also, that to make a person, who occupied certain premises, and who was entitled to the owner's vote in respect thereof, entitled to a vote as occupied in respect of the same premises, he must either pay rent to the owner or be liable to pay rent. *Held*, also, that voters must give written notice of their claims whether they sign the notice or not, to the Chairman of the Corporation under the provisions of r. 8 (*i*) of Sch. IV of the Calcutta Municipal Act prior to 1st January immediately preceding each general election. It was upon the person objecting to the votes to prove that the voters had not complied with the provisions of the Act or the rules. *Held*, also, that the only persons to whom r. 3 of Sch. IV of the Calcutta Municipal Act applied, were persons who were actually liable for the rates in respect of the six months specified therein. *Held*, also, that persons occupying flats or portions of houses used as flats which were not separately assessed as such in the records of the Corporation, were not associations of individuals within the meaning of s. 37 of Calcutta Municipal Act. *Held*, also, that the word "occupier" in s. 37 (*2*) (*i*) (*c*) and in s. 37 (*2*) (*i*) (*a*) of the Calcutta Municipal Act meant an occupier in the ordinary sense and not as defined in s. 3 (*30*) of that Act, and the only person who fell within s. 37 (*2*) (*i*) (*c*) was a person who occupied a building separately numbered and valued for assessment. *In re* SURENDRA CHANDRA GHOSE (1918).

I. L. R. 45 Calc. 950

2. ——— *Calcutta Municipal Act s. 56, Sch. 5, r. 2—Specific Relief Act (I of 1877), ss. 45, 50—Public officer, failure of, to exercise a discretion—Nomination paper—Description of the candidate—Rai Bahadur, if sufficient description—Delay in presenting the petition, effect of—Infructuous order, whether ought to be passed.* The appellant sent in his nomination paper on the 4th March 1918, in which he was described as Rai Bahadur and it was also stated that he was Voter No. 679. On the 16th March a list of nominated candidates was published. On the 18th March judgment was delivered by the Appeal Court in the election case of Narendra Nath Mitter. On the afternoon of the same day the applicant (respondent in this case) applied to the Chairman of the Corporation to reject the nomination paper of the appellant on the ground that the nomination paper did not contain the description of the appellant. The Chairman declined to entertain the application on the ground that it was too late. On the morning of the 19th March a petition was presented by the applicant before Chaudhuri, *J.*, and a rule was issued on the appellant returnable at 4 P.M. on the same day to show cause why his name should not be expunged from the list of nominated candidates and the rule was made absolute. In pursuance of this the appellant's name was taken out of the list. On the 20th, which was the day fixed for election, the respondent being the only nominated candidate was elected commissioner. This appeal was filed on the 20th

MUNICIPAL ELECTION—*contd.*

March and came on for hearing on the 21st after the election had taken place. *Held*, that an order overruling the decision of Chaudhuri, *J.*, would be infructuous; for the appellant's name had been expunged from the list of nominated candidates, the election had taken without the inclusion of the appellants' name in the list of candidates and the Appeal Court had in this appeal no power to set that right, and so the appeal must be dismissed. The Court's order ought to have been limited to a direction to the Chairman of the Corporation to exercise his jurisdiction and to hear and determine the application which had been made to him and which he had refused to entertain on the ground that it was too late. The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretional, and subject to considerations of the importance of the particular case or of the principle involved in it, of delay on the part of the applicant, and of his merits with respect to the case in which the interference of the Court is sought. Should other special causes appear for, or against, the Court's intervention, due weight is to be given to them, regard being always had to the principles already enumerated. MANI LAL NAHAR *v.* MOWDAD RAHAMAN (1918).

22 C. W. N. 951

3. ——————— *Calcutta Municipal Act, Sch. V, r. 2—Election —Requisites of valid nomination paper—Candidate, description of —Description in the letter, whether sufficient—Proposer, seconder and approver—Proposer or seconder, whether can be an approver—Approver being a firm name, effect of.* The appellant, a candidate for municipal election, sent in his nomination papers consisting of a letter signed by himself addressed to the Chairman of the Corporation of Calcutta and three forms of a nomination paper all stitched together. The first form contained the name and address of the candidate and also the statement that the was voter No. 1553 of Ward No. 6. It also contained the signatures with names and addresses of the proposer, seconder and of 18 approvers, the seconder being one of the approvers and the approver No. 15 being the name of a firm. The other two forms did not contain the name either of the candidate, the proposer or seconder, but contained the signature of some approvers. *Held*, that the nomination paper was invalid in law inasmuch as it did not contain the description of the candidate. Sch. V, r. 2, of the Calcutta Municipal Act contemplates that a nomination paper should be self-contained and complete in itself and so the letter could not be taken as part of the nomination paper. *Held*, also, that the 2nd and 3rd forms could not be taken as part of the nomination paper inasmuch as they did not contain the name of candidate. *Held*, further, that the nomination paper was bad in law inasmuch as it did not contain the signatures of 18 approvers in addition to those of the proposer and seconder. It is clear from Sch. V, r. 2, that if a person signs a nomination paper of a candidate, either as a proposer or seconder, he cannot also sign it as an approver. Signature of approver No. 15 not being that of an individual was bad in law and should be rejected. *Per* WOODROFFE, *J.* Alternative nomination papers may be sent to the Chairman, so that if one is held, either in whole or in part to be invalid, the other may be used. In such case, however, each nomination paper should be complete in itself. A candidate may also send in a nomination paper with names of more than 18 voters as mentioned in the rule in order to meet the case of possible objections to any of the voters whose names appear upon the paper. In such a case more than one nomination paper may be used, but the papers must be connected (otherwise than as here by mere pinning together). That connection is effected by placing on each paper the name, description and address of the candidate as appearing on the first paper. NARENDRO NATH MITTER *v.* RADHA CHARAN PAL (1918).

22 C. W. N. 943

MUNICIPAL OFFENCE.

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), S. 307.

I. L. R. 40 All. 569

MUNICIPALITY.

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888, AS AMENDED BY BOM. ACT V OF 1905), SS. 296, 297, 299, 301.

I. L. R. 42 Bom. 462

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), SS. 70, 113, 122 . **I. L. R. 42 Bom. 454**

See DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), S. 96, SUB-SS. 1, 2, 3, 4 . . **I. L. R. 42 Bom. 629**

MURDER.

See PENAL CODE (ACT XLV OF 1860), S. 302 . . **I. L. R. 40 All. 360**

MUTT.

——————— *Improper alienation of mutt properties by the head of the mutt—Suit by disciples under O. I, r. 8, Civil Procedure Code (Act V of 1908), to set aside the alienation and for possession to be given to the head of the mutt for the time being, whether maintainable—Limitation—Limitation Act (IX of 1908), Arts. 120, 134 and 144, applicability of.* The disciples of a *mutt* have sufficient 'interest' within O. I, r. 8 of the Civil Procedure Code to maintain a representative suit not only for a declaration of the invalidity of an improper alienation of the mutt properties by the head of the mutt, but also for a decree directing possession to be given to the head of the mutt for the time being. It is immaterial whether the head of the mutt be a trustee or only a life-tenant. The suit being one for possession, the article of the Limitation Act applicable is not 120, but Art. 134 or 144, according as the head of the mutt is a trustee or only a life-tenant; and the right to sue for possession arises from the date of the alienation or when possession begins to be adverse. Possession which is adverse to the institution is equally adverse to the plaintiffs who sue on its behalf. CHIDAMBARANATHA THAMBIRAN *v.* NALLASIVA MUDALIAR (1917) . . **I. L. R. 41 Mad. 124**

N

NATIVE STATE.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL S.(5) AND (6).

I. L. R. 42 Bom. 420

NAVIGABLE RIVER.

——— *Determining test.* The test in this country as to whether a river is navigable is whether it allows of the passage of boats at all times of the year. SECRETARY OF STATE FOR INDIA *v.* BEJOY CHAND MAHTAP (1918).
22 C. W. N. 872

NEGLIGENCE.

——— liability of lambardar for—
See AGRA TENANCY ACT (II OF 1901), SS. 164, 166 . **I. L. R. 40 All. 246**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— ss. 26, 27, 28—*Agent, meaning of—Hundi or promissory note drawn or made by a trustee of a charity—Personal liability of trustee—Liability of charity property and other members of the family—Signature of trustee with vilasam of charity prefixed, effect of—Liability of non-executants.* A person drawing a hundi or bill of exchange or making a promissory note as trustee of a temple or of a charity is *personally* liable on such bill or note. Rule of English Law as to bills drawn or notes made by church wardens, overseers and others who describe themselves in their official capacities, applied. English and Indian cases reviewed. 'Agent' referred to in sections 27 and 28 of the Indian Negotiable Instruments Act, means the agent of a person capable of contracting within the meaning of s. 26, and when the agent is not liable, the principle is. A person drawing a bill or making a note as trustee of a temple or charity is not acting on behalf of such a principal and cannot claim the benefit of s. 28. When the agent of a Chetti firm in executing a negotiable instrument prefixes the firm's vilasam, this is a well understood indication that he is acting only as an agent and has been so recognized by the Courts; but when a man signs as trustee prefixing the charity vilasam, there is on the face of the document no clear indication that he contracts for any one else but himself. PALANIAPPA CHETTIAR *v.* SHANMUGAM CHETTIAR (1918) . **I. L. R. 41 Mad. 815**

——— s. 43—
See C. I. F. CONTRACTS.
I. L. R. 42 Bom. 473

NOABAD TALUQ.

——— *Noabad taluq, whether a permanently-settled taluq.* A Noabad *taluq* may or may not be a permanently-settled *taluq*. ASHRAFF ALI *v.* KARAM ALI (1918).
22 C. W. N. 1025

NON-CONFESSIONAL STATEMENTS.

See MISDIRECTION.
I. L. R. 45 Calc. 557

NON-OCCUPANCY HOLDING.

——— *Non-occupancy raiyati holding, sale of, in execution of money-decree—Raiyat's right to raise question of non-transferability.* A non-occupancy raiyati holding was sold in execution of a money-decree whereupon the judgment-debtors objected on the ground of non-transferability. The pattah of the land prohibited any kind of transfer without the consent of the landlord and gave the landlord the right of *khas* possession in case any such transfer took place: *Held*, that if the terms of the lease gives the landlord a right of re-entry in the case of a transfer without his consent that may raise a question between the purchaser, if any, at the Court-sale and the landlord, but does not clothe the raiyat with a right to object to the sale. LELONG JUMIA *v.* RAJANI KANTA CHOWDHURY (1918).
22 C. W. N. 792

NON-RIPARIAN OWNER.

——— right of, to the flow of river water—
See EASEMENTS ACT (V OF 1882), SS. 2 (*c*) AND 17 (*c*) . **I. L. R. 42 Bom. 288**

NOTICE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1.
I. L. R. 42 Bom. 155

See CRIMINAL PROCEDURE CODE, S. 437.
I. L. R. 40 All. 416

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (*6*).
I. L. R. 42 Bom. 553

See PUBLIC DEMANDS.
I. L. R. 45 Calc. 496

See SERVICE OF NOTICE.
I. L. R. 45 Calc. 496

NOTIFICATION.

See REVENUE SALE.
L. R. 45 I. A. 205

NOVELTY.

See DESIGN . **I. L. R. 45 Calc. 606**

O

OATHS ACT (X OF 1873).

——— s. 5—
See WITNESS . **I. L. R. 45 Calc. 720**

OBLIGATION.

See GIFT WITH OBLIGATION.
I. L. R. 42 Bom. 93

OBSTRUCTION.

See CALCUTTA POLICE ACT (BENG. IV OF 1866) S. 66 (*4*) . **22 C. W. N. 455**

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901) S. 20.
I. L. R. 40 All. 314

See AGRA TENANCY ACT (II OF 1901), S. 34 . . **I. L. R. 40 All. 300**

1. ——— *Transferability—Gift, validity of—Revocation of gift—Transfer of Property Act (IV of 1882), ss. 122, 123, 126.* In cases of transfer by gift of occupancy holdings, the question of transferability cannot be raised by the heir of the donor to the prejudice of the donee or his representative in interest. *Rahim Jan Bibi* v. *Imam Jan, 17 C. L. J. 173*, referred to. Where a gift duly registered and executed is not suspended or made revocable on the happening of any specified event or in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded as provided for in s. 126 of the Transfer of Property Act; it cannot be maintained

OCCUPANCY HOLDING—*concld.*

that the property comprised in such gift continued to form part of the estate of the donor. The property ceased to be part of the donor's estate and the heir did not succeed thereto by right of inheritance. In cases of transfers for value, the title passes from the transferor to the transferee, although the validity of the transfer is liable to be questioned by the landlord who is not a party to the transaction and may possibly refuse to recognise the transfer. *Dayamaiyi* v. *Ananda Mohan Roy Chowdhury, I. L. R. 42 Calc. 172*, followed. *Villers* v. *Beaumont, 1 Vern. 101*, referred to. *Milroy* v. *Lord, 4 DeG. F. & J. 264*, *Richards* v. *Delbridge, L. R. 18 Eq. 11*, *Amulya Ratan Sircar* v. *Tarini Nath Dey, I. L. R. 42 Calc. 254*, distinguished. BEHARI LAL GHOSE *v.* SINDHUBALA DASI (1917).

I. L. R. 45 Calc. 434

2. ——— *Non-transferable—Part of holding, bequest of, if valid—Principle of estoppel and waiver or acquiescence, if applies.* The testamentary disposition of a part of a non-transferable occupancy holding like that of the whole holding is invalid, and it was so held in a suit by the devisee against the raiyat's heir-at-law. UMESH CHANDRA DUTTA *v.* JOY NATH DAS (1917).

22 C. W. N. 474

3. ——— *Transfer of—Custom of payment of nazar to landlord.* In order to establish a custom of transferability subject to the payment of a customary *nazar*, the evidence must show that the landlord is bound to recognise when *nazar* of the amount, or at the rate, determined by custom is tendered to him. A practice or course of business in a zemindary office according to which a transferee is recognised provided that the amount of the *nazar* is satisfactory to the landlord is not sufficient. The payment of *nazar* without more is an indication that the *jotes* are not transferable without the landlord's consent given on receipt of the *nazar*. A custom which leaves the amount or rate of *nazar* indefinite must be void for uncertainty. MINA KUMARI *v.* ICHHAMOYEE CHAUDHURANI (1918).

22 C. W. N. 929

OCCUPANCY RAIYAT.

See LAND ACQUISITION ACT (I OF 1894), SS. 23, 49 . **I. L. R. 40 All. 367**

——— **suit for declaration of status as—**

See COURT FEES ACT (VII OF 1870), SCH. II, ART. 5; S. 7, XI.

I. L. R. 40 All. 358

——— *Mortgage of part of occupancy holding—Subsequent lease of same while mortgage was yet unregistered—Rights of mortgagees and lessee.* An occupancy tenant made a usufructuary mortgage of certain plots of land comprised in his occupancy holding. He apparently gave the mortgagees possession, but refused to get the mortgage deed registered, and in consequence the mortgagees were obliged to bring a suit to compel registration. Whilst this suit was pending, the occupancy tenant leased certain plots covered by the mortgage at a yearly rent for a period of five years: *Held*, on suit by the lessee for possession, that the plaintiff was entitled to a decree, and that he was not bound, as a condition precedent, to pay off the mortgagees. *Baharan Upadhya* v. *Uttamgir, I. L. R. 33 All. 779*, referred to. HABIB-ULLAH *v.* MANRUP (1917) **I. L. R. 40 All. 228**

OCTROI DUTY.

See GENERAL CLAUSES ACT (I OF 1904), S. 24 . **I. L. R. 40 All. 105**

ONUS OF PROOF.

See EJECTMENT SUIT.

I. L. R. 42 Bom. 357

OPTION OF PURCHASE.

See LEASE . **I. L. R. 42 Bom. 103**

ORAL EVIDENCE.

See CONTRACT FOR SALE.

I. L. R. 45 Calc. 481

——— **to vary terms of a written document—**

See EVIDENCE ACT (I OF 1872), S. 92.

I. L. R. 42 Bom. 512

ORIGIN.

See CUSTOM . **I. L. R. 45 Calc. 835**

OUDH ESTATES ACT (I OF 1869).

——— **ss. 7, 8, 10, 22—**

See HINDU LAW—INHERITANCE.

I. L. R. 40 All. 470

OUDH RENT ACT (XIX OF 1868).

——— *Under-proprietor, status of, distinguished from that of tenant—Under-proprietor declared by decree to be without right of transfer—Effect—Status of under-proprietor not affected.* Under a compromise agreed to in 1867 between an Oudh talukdar and a relation of his who had been claiming a half share in the taluk, the former agreed to grant to the latter the under-proprietary right in village D. The Settlement Officer before whom the matter came up for orders on 8th June 1869 *ex abundanti cautela* sent for the grantor to ascertain whether he intended to confer on the grantee the right to transfer. The grantor did not appear but the grantee to avoid further harassment agreed to the passing of a decree declaring his status to be that of an "under-proprietor without right of transfer:" *Held*, that the Settlement Officer's order involved a contradiction in terms. That the law attaches certain rights to the status of an under-proprietor, which by the decree the grantee was declared to be, in accordance with the terms of the compromise, and so long as he retained that status he remained clothed with those rights and he could not be divested of them unless and until he lost that status: and the words "without right of transfer" in the decree did not affect his rights as under-proprietor. The position of a *qabiz-darmiani* or "under-proprietor," was fully understood in Oudh before the passing of Act XIX of 1868 which definitely crystallized and gave statutory recognition to his rights and status. That Act draws a sharp distinction between an "under-proprietor" and "za tenant." SRIPAT SINGH *v.* BASANT SINGH (1918).

22 C. W. N. 985

OUDH RENT ACT (XXII OF 1886).

——— **s. 3 (*10*); Ch. VII-A.**—*Enhancement of rent—Lease by talukdar for collection of rents of a mauza to thekadar—Amendment of Act by United Provinces Act (IV of 1901) (Oudh Rent, Act 1886, Amendment Act).* Since the addition to the Oudh Rent Act (XXII of 1886) by the amending Act

OUDH RENT ACT (XXII OF 1886)—*concld.*

——— s. 3—*concld.*

(Oudh Rent Amendment Act, 1901) of Chap. VIIA, which deals (*inter alia*) with the enhancement of the rent of land held at a favourable rent, and contains ss. 107A to 107K, the specific enactments of Chap. VIIA are not limited in their application by s. 3, sub-s. (*10*), which must be regarded as a mere glossary defining the terms "tenant" and "thekadar" as those terms are employed in Act XXII of 1886 as it stood when it was passed. *Held*, therefore, where the defendant (appellant) was a thekadar or person to whom the collection of the rents of a mauza belonging to a taluqa had been leased in 1891 by the then taluqdar at a "favourable rate of rent," the rent was liable to enhancement under Chap. VIIA of Act XXII of 1886 in accordance with the provisions, and on the conditions of that chapter suitable to the circumstances of the case. PARBATI KUNWAR *v.* DEPUTY COMMISSIONER OF KHERI (1918).

I. L. R. 40 All. 541

OWNER.

——— liability of—

See MOTOR VEHICLES.

I. L. R. 45 Calc. 430

OWNERSHIP.

——— dispute as to—

See WAJIB-UL-ARZ.

I. L. R. 45 Calc. 791

P

PAKKI ADAT.

——— distinguished from kachchi adat—

See CONTRACT . **I. L. R. 42 Bom. 224**

See WAGERING CONTRACTS.

I. L. R. 42 Bom. 373

PALA OR TURN OF WORSHIP.

——— *Pala of worship, whether immoveable property—Limitation Act (IX of 1908), Art. 130, whether governs suit to enforce mortgage of pala.* A turn of worship is not an interest in immoveable property. Consequently a suit to enforce a mortgage of a turn of worship is not governed by Art. 132 but by Art. 120 of the Limitation Act. NARASHIGHA BANA GOSWAMI *v.* PROLHADMAN TEOARI (1918) . **22 C. W. N. 994**

PALAYAM.

See UNSETTLED PALAYAM.

I. L. R. 41 Mad. 749

PARDANASHIN LADY.

See PURDANASHIN LADY.

See MORTGAGE . **I. L. R. 45 Calc. 748**

PARTIES.

See MISJOINDER . **I. L. R. 45 Calc. 111**

1. ——— *Admission of one of the parties to a suit—When such admission receivable against other defendants—Identity—A document* per se *not inadmissible—Objection to its admission in appeal for the first time.* When several persons are jointly interested in the subject-matter of a suit, an admission of any one of these persons is

PARTIES—*contd.*

receivable not only against himself but also against the other defendants, whether they be all jointly suing or sued, provided that the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirement of the identity in the legal interest between the joint owners is of fundamental importance. *Kowsulliah Sundari* v. *Mukta Sundari, I. L. R. 11 Calc. 588, Chalho Singh* v. *Jharo Singh, I. L. R. 39 Calc. 995, Meajan Matbar* v. *Alimuddi, I. L. R. 44 Calc. 130, Blenkinsopp* v. *Blenkinsopp, 11 Beav. 134; 2 Phillip 607,* referred to. The admission of one co-plaintiff or co-defendant is not receivable against another merely by virtue of his position as a co-party in the litigation. If the rule were otherwise, it would in practice permit a litigant to discredit an opponent's claim merely by joining any person as the opponent's co-party and then employing that person's statements as admissions. Consequently, it is not by virtue of the person's relation to the litigation that the admission of one can be used against the other; it must be, because of some priority of title or of obligation. *Morse* v. *Royal, 12 Ves. 355. King* v. *the Inhabitants of Hardwick, 11 East. 578,* refererd to. The Court will not entertain, for the first time, in appeal an objection that a document which *per se* is not indamissible in evidence, has been improperly admitted in evidence. *Girindra Chandra Ganguli* v. *Rajendra Nath Chatterjee, 1 C. W. N. 530. Preonath Mazumdar* v. *Durga Tarini Bhose, 14 C. L. J. 578,* referred to. AMBAR ALI *v.* LUTFE ALI (1917).

I. L. R. 45 Calc. 159

2. ——— *Right to sue — Cause of action, survival of—Abatement of suit—Letters of Administration, application by residuary legatee, for grant of—Death of residuary legatee—Substitution of heir of residuary legatee—Contentious matter—Civil Procedure Code (Act V of 1908), O. XXII.* The right to a grant of administration is a personal right derived from the Court. If on the death of the testatrix, the residuary legatee under her will had obtained a grant of administration to her estate with a copy of the will annexed, his title would have been derived from the Court and would not devolve on his heir. The heir of the residuary legatee may be the proper person to obtain a grant of administration with a copy of the will annexed, but this is not by virtue of any right to administration which he inherited from the residuary legatee, but by virtue of the fact that as heir of the residuary legatee, he is the person most interested in the estate of the testatrix. *Sarat Charndra Banerjee* v. *Nani Mohan Banerjee, I. L. R. 36 Calc. 799,* referred to. HARIBHUSAN DATTA *v.* MANMATHA NATH DATTA (1918).

I. L. R. 45 Calc. 862

3. ——— *Joinder of parties —Tenants-in-common—Lands in possession of lessees —Suit by a tenant-in-common to recover his share by partition from the lessees direct—Other tenants-in-common not necessary parties.* A piece of land was held in common by several persons, of whom those owning 11-12ths share leased out their share to defendents Nos. 1 and 2 on permanent tenure. The plaintiff and defendants Nos. 3 and 4 who owned the remaining 1-12th share leased their share to the same defendants on a yearly tenancy. The plaintiff sued defendants Nos. 1

PARTIES—*concld.*

and 2 to recover the 1-12th share by partition and also to recover its rent, without making the other tenants-in-common parties to the suit: *Held*, that the tenants-in-common were not necessary parties and that the plaintiff was entitled to recover by partition the 1-12th share and also the rent. NARAYAN BALKRISHNA *v.* FASKU MONU (1917) . . . . **I. L. R. 42 Bom. 87**

PARTITION.

See HINDU LAW—PARTITION.

See HINDU LAW—JOINT FAMILY.

I. L. R. 45 Calc. 733

——— by Collector—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 54 . **I. L. R. 42 Bom. 689**

——— suit for, on behalf of a minor—

See HINDU LAW—PARTITION.

I. L. R. 41 Mad. 442

——— *Suit for partition—Jurisdiction—Partition Act (IV of 1893), s. 4—"Court"—"Dwelling-house"* *A*, *B* and *C*. were the joint owners of a property. *A* sold his share to *Z*, *Z* instituted a suit for partition. *B* and *C* claimed to purchase *Z*'s share under s. 4 of the Partition Act. The Court of first instance made a preliminary decree and appointed a Commissioner and subsequently made a final decree. *B* and *C* appealed. The Lower Appellate Court remanded the case for the determination of the suit under s.4 of the said Act: *Held*, that the word "Court" in s. 4 of the Partition Act included the Appellate Court. The latter like the trial Court was bound, upon any member of the family who was a shareholder undertaking to buy the share of the transferee, to make an appropriate order in pursuance of which the steps necessary to carry out the provisions of the section would be taken either in the one Court or in the other: *Held*, also, that in connection with a conveyance or a partition of a "dwelling house" the word would generally mean not only the house itself but also the land and appurtenances which were ordinarily and reasonably necessary for its enjoyment. *Kshirode Chunder Ghosal* v. *Saroda Prosad Mitra, 12 C. L. J. 525*, referred to. PRAN KRISHNA BHANDARI *v.* SURATH CHANDRA ROY (1918).

I. L. R. 45 Calc. 873

PARTITION ACT (IV OF 1893).

——— s. 4—

See PARTITION . **I. L. R. 45 Calc. 873**

PARTNERSHIP.

——— acknowledgment of liability or payment by partner—

See LIMITATION ACT (IX OF 1908), SS. 21 (2), 19 AND 20 . **I. L. R. 41 Mad. 427**

1. ——— *Partnership by manager of joint Hindu family with strangers—Right of other members of family to institute suits in respect of partnership.* A contract of partnership entered into by the manager of a joint Hindu family with strangers does not *ipso facto* make the other members of the family partners; and not being partners, the other members whether divided or undivided cannot institute any suit in respect of partnership (*e.g.*), a suit for dissolution of partnership. *Sokkanadha Vannimundar* v. *Sokkanadha Vannimundar, I. L. R. 28 Mad. 344*, and *Ramanathan Chetty* v. *Yegappa Chetty, 30 Mad. L. J. 241*, applied. *Joopoody Sarayya* v. *Lakshmanaswamy, I. L. R. 36 Mad. 185*, distinguished. GANGAYYA *v.* VENKATARAMIAH (1917).

I. L. R. 41 Mad. 454

2. ——— *Boat, co-owners of—Employment of boat to earn freight—Partnership in freight—Suit for dissolution, whether matintainable—S. 329, Indian Contract Act (IX of 1872).* Where the co-owners of a boat employ it to earn freight, they become partners in respect of such earnings and a suit for dissolution of such partnership is maintainable although the plaintiff being only a co-owner is not entitled to a decree for the sale of the boat employed by the partnership. VANAMATI SATTIRAJU *v.* BOLLAPRAGADA PALLAMRAJU (1918) . . . **I. L. R. 41 Mad. 939**

3. ——— *Death of one partner leaving a minor son—Suit by surviving partner against minor for rendition of accounts—Procedure.* One of two partners in a specific business, who was alleged to have been the managing partner, died, leaving him surviving a minor son. The other partner sued the minor, as his father's representative, for rendition of accounts and for payment of what might be found due to him (the plaintiff): *Held*, that suit was maintainable; but the proper procedure was for the Court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to to be due from one party to the other. SHANKAR LAL *v.* RAM BABU (1918) . **I. L. R. 40 All. 446**

4. ——— *Right to sue for dissolution of partnership where it cannot be carried on except at a loss—Clause in partnership agreement stating date agreed upon for termination of partnership—Contract Act (IX of 1872), ss. 252, 254, sub-s. (6)—Right to protection of Court on equitable grounds—Discretion of Court to grant dissolution.* The defendants (respondents) a firm of contractors had undertaken the construction of the new Alexandra Dock in Bombay, and they required for the work a large supply of granite and other stone. For that purpose they formed a partnership with the plaintiff (now represented by the appellants) for the quarrying and supplying the required materials. By cl. 4 of the deed of partnership it was agreed that "the working of the quarries, and the partnership should continue until the supply of granite or other stone for the construction of the dock was completed, and that the partnership should then terminate and be wound up." The plaintiff, finding after a time that the partnership could not be carried on except at a loss, brought a suit for its dissolution and for an account before the supply of granite and stone had been completed, and the defendants contended that the suit was premature: *Held* (reversing on this point the decision of the appellate High Court which had set aside that of the trial Judge), that, notwithstanding the terms of cl. 4, the plaintiff was entitled on the ground alleged, and under the circumstances of the case, to have a dissolution under sub-s. (6) of s. 254 of the Contract Act (IX of 1872). There was nothing in s. 252 of that Act to constitute a bar to such a suit. A partner's claim to a decree for dissolution rested, in its origin, not on contract, but on his inherent right to invoke the Court's protection on equitable grounds, in spite of the terms on which the rights and obliga-

PARTNERSHIP—*concld.*

tions of the partners might have been regulated and defined by the partnership contract. There was no ground for questioning or disturbing the discretion given by the Act and exercised by the original Court in making a decree for dissolution in the plaintiff's favour. REHMATUNNISSA BEGUM *v.* PRICE (1917) . . **I. L. R. 42 Bom. 380**

PATENTS AND DESIGNS ACT (II OF 1911).

——— **ss. 62, 64, 67—**

See DESIGN . **I. L. R. 45 Calc. 606**

PATNI.

See PUTNI.

——— **consideration for—**

See ILLEGAL CESS.

I. L. R. 45 Calc. 259

PAYMENT.

See SALE OF GOODS.

I. L. R. 45 Calc. 28
I. L. R. 42 Bom. 16

PENAL CODE (ACT XLV OF 1860).

——— **ss. 22, 403**—*Criminal misappropriation*—"*Movable property*"—*Letter addressed to one person retained by another.* A letter addressed to *W* was handed by a postman to *W*, who was at the time in a room in the occupation of *H*. *W* read the letter, and put it on a table in the room and left it there. *H* took the letter, and subsequently attempted to file it as an exhibit attached to an affidavit made by him in a suit for judicial separation between *W* and his wife, for the purpose, as he afterward sstated, "of strengthening Mrs. *W*'s case and of improving his own position." The Court, however, refused to receive the letter: *Held*, that in the circumstances *H* could not be convicted of dishonest misappropriation of property with respect to his retention of the letter. *Quœre:* Whether the letter could be regarded as "moveable property" within the meaning of s. 22 of the Indian Penal Code. EMPEROR *v.* HARRIS (1917) . . . . **I. L. R. 40 All. 119**

——— **ss. 29, 30, 464, 467 and 474**—*Forgery—Document, meaning of—Valuable security—Incomplete document—Material alteration of incomplete document, effect of.* An agreement in writing which purported to be entered into between five persons, was signed by only two of them; it was altered by the addition of some material terms by the accused who was one of the two executants without the consent or knowledge of the other executant and was not signed by the other parties to the agreement. The accused was in possession of the instrument which was altered by him: *Held*, by OLDFIELD, *J.* (on a reference under s. 429, Criminal Procedure Code, owing to difference of opinion between SADASIVA AYYAR and PHILLIPS, *JJ.*), that the accused was guilty of the offence of forgery of a valuable security under s. 467, or of being in possession of a forged document under s. 474 of the Indian Penal Code. The instrument, though not signed by all the parties thereto, fulfilled the requirements of the definition of a 'document' in s. 29 of the Code. The document was a valuable security because it imposed an obligation on the actual executants and an option on the others and there was no express or implied condition precedent to be found in the document or established by independent evidence that the document was to be inoperative against the executants until all the parties executed it. It is open to the accused to plead and to prove that the alteration were not made fraudulently or dishonestly, because they represented what accused in good faith believed to be the truth and intended to use to support what in good faith he claimed or might claim. *Queen-Empress* v. *Syed Hussein*, *I. L. R. 7 All. 403*, *Queen-Empress* v. *Sheo Dyal*, *I. L. R. 7 All. 459*, *Queen* v. *Kishan Pershad*. *2 N.W.P. H. C. R. 202*, and *Manicka Asari* v. *Emperor*, *(1915) Mad. W. N. 278*, referred to. *Regina* v. *Turpin*, *2 C. & K. 820*, disapproved. *R.* v. *Bingley*, *(1821). R. & R. 449*, referred to. *R.* v. *Lee*, *3 Cox 80*, and *Reg.* v. *Harper*, *7 Q. B. D. 78*, followed. RAMASWAMI AYYAR *v.* THE KING-EMPEROR (1917). **I. L. R. 41 Mad. 589**

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— **s. 29**—*contd.*

——— **s. 97—**

See EVIDENCE ACT (I OF 1872), S. 105.

I. L. R. 40 All. 284

——— **s. 108—Expl. 4, ss. 109 and 116—**

Abetment of an abetment—Inciting another to instigate a Magistrate to accept a bribe—s. 161. The words "when the abetment of an offence is an offence" in Expl. 4, s. 108, Indian Penal Code, do not mean "when an abetment of an offence is actually committed." They mean when the abetment of an offence is by definition or description an offence under the Code, that is, when an abetment of an offence is punishable under s. 109 or s. 116 or some other provision of the Code, then the abetment of such abetment is also an offence SRILAL CHAMARIA *v.* KING-EMPEROR (1918).

22 C. W. N. 1045

——— **s. 120B**—*Criminal Procedure Code, s. 196A—Conspiracy—Authority for prosecution for conspiracy—Complaint.* S. 196A of the Criminal Procedure Code provides that no Court shall take cognizance of the offence of criminal conspiracy punishable under s. 120B of the Indian Penal Code "in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards unless the Local Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings." *Held*, that the words "not punishable with death, etc.," relate only to the term "cognizable offence." Three persons presented a petition to the Magistrate and Collector of a district stating that a tahsildar was guilty of various offences under the Indian Penal Code, the principle offence being one under s. 161. The Magistrate treated the petition as a complaint; took the evidence of the person presenting it, and finally dismissed it under s. 203 of the Code of Criminal Procedure and gave sanction for the prosecution of the persons responsible for the petition: *Held*, that the Magistrate's procedure, was not open to objection. EMPEROR *v.* THAKUR DAS (1917) . . **I. L. R. 40 All. 41**

——— **s. 173**—*Summons—Refusal to receive summons when tendered, no offence.* Under the Code of Criminal Procedure the mere tender to a person of a summons is sufficient, and a refusal by him to receive it does not constitute the offence of intentionally preventing service thereof on himself

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 173**—*concld.*

under s. 173 of the Indian Penal Code. EMPEROR *v.* SAHDEO RAI (1918) . **I. L. R. 40 All. 577**

——— **s. 182**—*Information to police that informant suspected the persons named as offenders, if amounts to giving false information.* Where a person in whose house a theft took place informed the police that he suspected two persons whom he named as the perpetrators of the crime: *Held*, that this did not amount to giving false information within the meaning of s. 182, Indian Penal Code. ANANGA MOHAN DUTTA *v.* KING-EMPEROR (1917) . . . . **22 C. W. N. 478**

——— **s. 186**—*Obstruction to public servant—Decree, form of—Execution—Warrant, not in form, validity of—Execution of invalid warrant of arrest, obstruction to, effect of—Procedure.* In an application for execution of a decree for restitution of conjugal rights a warrant was issued directing the executing peon to seize the wife and deliver her bodily to her husband, failing which to bring her under arrest before the executing Court. The peon seized the woman in execution of the warrant but he was resisted and the woman was snatched away: *Held*, that the warrant, the execution of which was resisted, was illegal and therefore no offence was committed under s. 186 of the Penal Code. GAHAR MAHAMED SARKAR *v.* PITAMBAR DAS (1918). **22 C. W. N. 814**

——— **s. 188**—*Criminal Procedure Code (Act V of 1898), s. 144—Prosecution for disobedience of order prohibiting disturbance.* By an order under s. 144, Criminal Procedure Code, the petitioners were directed not to make any disturbance over a certain person's rights of a ferry and thereafter the petitioners being found plying another ferry at the site in question but not causing any disturbance were ordered to be prosecuted under s. 188, Indian Penal Code: *Held*, that the order for prosecution was infructuous. SUJAL BISWAS *v.* SAMIRUDDIN MANDAL (1917) . . . **22 C. W. N. 599**

——— **s. 192**—"*Fabricating false evidence*"—*Document helping Court to form a correct opinion.* Certain cattle were sold in a market on the 21st of March, 1917. A clerk, whose duty it was to register sales of cattle held at that market and give receipts to the purchasers, gave a receipt on the 27th March, most probably, and dated it the 27th March, 1917, but subsequently altered the date to the 21st, the actual date of sale: *Held*, that there was no case of fabricating false evidence, for the alteration of the date was not intended to lead anyone to form an erroneous opinion touching the date of sale, but the contrary. EMPEROR *v.* BADRI PRASAD (1917) . . . **I. L. R. 40 All. 35**

——— **s. 266**—*Possession of false measure—Intent—Acquittal—Criminal Procedure Code, s. 438—Practice.* It being in evidence that in the village where accused carried on the business of a cloth-seller the usual standard of measurement was 35½ inches, it was *held*, that a conviction under s. 266 of the Indian Penal Code in respect of the possession of such a measure of length could not be sustained: *Held*, also, that the High Court will not as a rule entertain a reference by a Sessions Judge having for its object the reversal of an acquittal, when the Government has right of appeal, more particularly when the matter is one, such as a question of correct weights and measures, in which the Government may be considered to be peculiarly

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— **s. 266**—*contd.*

interested. EMPEROR *v.* HARAK CHAND MARWARI (1917) . . . . **I. L. R. 40 All. 84**

——— **s. 290**—*Public nuisance—Liability of principal for act of agent.* The propreitors and the manager of a mill were prosecuted and convicted under s. 290, Indian Penal Code, on a complaint that the working of the mill was a nuisance. It appeared that the proprietors were not residents in the locality and there was no allegation of any abetment, by them: *Held*, that the general rule is that a principal is not criminally answerable for the acts of his agent. Speaking generally the person liable where the user of premises gives rise to a nuisance is the occupier for the time being whoever he may be and the conviction of the proprietors was bad in law. BIBHUTI BHUSAN BISWAS *v.* BHUBAN RAM (1918) . **22 C. W. N. 1062**

——— **s. 295**—'*Defile*,' *meaning of—Moothans, presence of, inside a temple, whether defilement.* The presence of Moothans, a sub-caste of Sudras, whose status is equal to, if not higher than, that of Nairs, in such portions of a Hindu temple as are open to non-Brahmans, is not a 'defilement' within s. 295, Indian Penal Code. KUTTICHAMI MOOTHAN *v.* RAMA PATTAR (1918).
I. L. R. 41 Mad. 980

——— **ss. 300 Excep. 4, 325**—*Grievous hurt—Murder—Culpable homicide not amounting to murder—Fatal assault committed by three persons acting in concert.* A dispute having suddenty arisen concerning the cutting of a sugarcane crop, three men armed with *lathis* attacked one of the men who was engaged in cutting the crop and beat him so severely that he died, his skull being broken in three places. A nephew of the man attacked, having his *lathi* with him, attempted to rescue his uncle, and also received considerable injuries: *Held*, that the offence of which the assailants were guilty was not the mere causing of grievous hurt, but culpable homicide, which, however, might in the circumstances, be considered as not amounting to murder by the application of excep. 4 of s. 300 of the Indian Penal Code. *Emperor* v. *Chandan Singh, I. L. R. 40 All. 103*, dissented from. *King-Emperor* v. *Hanuman, I. L. R. 35 All. 560*, and *Emperor* v. *Ram Newaz, I. L. R. 35 All. 506*, referred to. EMPEROR *v.* GULAB (1918).
I. L. R. 40 All. 686

——— **s. 302**—*Murder—Poisoning by arsenic—Intention—Knowledge.* A person who administers a well-known poison like arsenic to another must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and if death ensue, he is guilty of murder, notwithstanding that his intention may not have been to cause death. *Queen-Empress* v. *Tulsha, I. L. R. 20 All. 143*, *King-Emperor* v. *Bhagwan Din*, I. L. R. 30 All., 508, and *King-Emperor* v. *Gutali, I. L. R. 31 All. 148*, referred to. EMPEROR *v.* GAURI SHANKAR (1918) . **I. L. R. 40 All. 360**

——— **ss. 304, 325**—*Assault committed by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.* Three persons attacked a fourth with *lathis* and death ensued through a fracture of the skull of the person so attacked. There was, however, no evidence to show that the common intention of the assailants was to cause death, or which of them actually struck the blow

PENAL CODE (ACT XLV OF 1860)—*contd.*

———— **ss. 304, 325**—*concld.*

which fractured the skull of the deceased: *Held*, that the offence of which the assailants were guilty was that of causing grievous hurt and not that of culpable homicide not amounting to murder. *Emperor* v. *Bhola Singh, I. L. R. 29 All. 282*, followed. EMPEROR *v.* CHANDAN SINGH (1917).

I. L. R. 40 All. 103

———— **ss. 323, 332**—*Criminal Procedure Code, s. 144—Public servant in the execution of his duty as such—Police constable assaulted whilst attempting to enforce an order which in fact had become obsolete.* A police constable was assaulted whilst endeavouring to enforce an order passed by the District Magistrate as to the carrying of *lathis* by Pragwals which order, if originally lawful, had in any case become obsolete: *Held*, that in the circumstances the persons who assaulted the constable could not be convicted under s. 332 of the Indian Penal Code, but they were liable to conviction under s. 323. *Queen-Empress* v. *Dalip, I. L. R. 18 All. 246*, referred to. EMPEROR *v.* MADHO (1917).

I. L. R. 40 All. 28

———— **s. 336**—*Doing a rash or negligent act endangering human life or personal safety of others—Licensed taxi-cab driver asked to wear spectacles at the time of driving—Driver using no spectacles at the time of driving—Liability.* The accused was, at the time he took out a license to drive taxi-cabs, asked to use spectacles at the time of driving owing to his defective eyesight. Still, he was one night driving his taxi-cab without wearing spectacles, when his car collided with another car; but it appeared that he was not liable for the accident. He was tried for an offence punishable under s. 336 of the Indian Penal Code, for doing an act so rashly or negligently as to endanger human life or the personal safety of others. The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much, and that it would not appreciably interfere with his efficiency as a driver. The Magistrate having convicted him of the offence charged, the accused applied to the High Court: *Held*, setting aside the conviction and sentence, that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others. EMPEROR *v.* ABAS MIRZA (1918).

I. L. R. 42 Bom. 396

———— **s. 343**—*Wrongful confinement—Detention of prostitutes in brothel.* Accused No. 1 who had a woman in his keeping at Kolhapur, brought her from Kolhapur to Bombay where he kept her in the brothel of accused No. 2. There she led the life of a prostitute, her movements were watched, and a guard was kept at the entrance of the house. She was occasionally allowed to go out of the house under surveillance. It appeared that accused No. 1 had on previous occasions supplied women to accused No. 2: *Held*, that on these facts accused Nos. 1 and 2 were both guilty of the offence of wrongfully confining the woman. EMPEROR *v.* BANDU EBRAHIM (1917). **I. L. R. 42 Bom. 181**

———— **s. 366**—

See ABDUCTION. **I. L. R. 45 Calc. 641**

———— **ss. 366, 360, 90**—*Kidnapping a girl out of British India to seduce her to illicit intercourse—Consent of the girl aged fifteen years.* The accused

PENAL CODE, (ACT XLV OF 1860)—*contd.*

———— **s. 366**—*concld.*

kidnapped a girl fifteen years of age out of British India, with her consent, in order that she might be seduced to illicit intercourse. He was convicted of an offence under s. 366 of the Indian Penal Code. On appeal: *Held*, reversing the conviction, that the accused had committed no offence under s. 366 of the Indian Penal Code, inasmuch as the girl who was over twelve years of age was kidnapped with her consent. EMPEROR *v.* HARIBHAI (1918).

I. L. R. 42 Bom. 391

———— **ss. 366, 368**—*Kidnapping—Lawful guardianship.* A Jat girl under the age of 16 years was sent by her father to carry food to the bullocks. She never returned home. Shortly afterwards she was found in a village not far from her home in the company of two men of the same caste. She was then dressed in boy's clothes and had her hair cut short. The two men offered no explanation as to how the girl came to be with them or why she was disguised: *Held*, that both the men in whose custody the girl was found were properly convicted under s. 366 of the Indian Penal Code. *Emperor* v. *Jetha Nathoo, 6 Bom. L. R. 785*, followed. EMPEROR *v.* HARKESH (1918).

I. L. R. 40 All. 507

———— **s. 370**—*Buying and selling as a slave, what amounts to.* The appellants in these cases were convicted by Sessions Court of North Malabar under s. 370, Penal Code, the second appellant having been found to have sold, and the first to have bought, a Pulayan named Vellan as a slave. The document recording the above transaction ran as follows:—"I execute to you and give you this day this jenmam deed giving you Velandi's son Pulayan Vellan with his heirs. The sum that I received from you in cash to-day is ten rupees. For this sum of ten rupees, you should get work done for you by the said Vellan and his offspring that may come into being as your jenmam, and act as you please." On a difference of opinion between ABDUR RAHIM and NAPIER, *JJ.*, as to whether the said transaction amounted to an offence under s. 370, Indian Penal Code: *Held*, by AYLING, *J.*, that the transaction in question was a sale of Vellan and his offspring as mere chattels and that the appellants were guilty of an offence under s. 370, Penal Code. *Empress of India* v. *Ram Kuar, I. L. R. 2 All. 723*, and *Amina* v. *Queen Empress, I.L. R. 7 Mad. 277*, referred to. KOROTH MAMMAD *v.* THE KING-EMPEROR (1917).

I. L. R. 41 Mad. 334

———— **s. 406**—*Criminal breach of trust—Necessary elements to constitute the offence.* The complainant owed money to the accused on a mortgage-bond and on a certain day went to their house and paid the amount settled as due in full satisfaction of the bond. An endorsement of payment was made on the back of the bond by one of the witnesses for the prosecution and the accused went inside their house with the bond and the money saying that they would keep the money and return the bond, but they did not come back that day and afterwards denied the receipt of the money: *Held*, that on the facts there was no trust which could bring the case within the terms of s. 406, Indian Penal Code. GOLAM HOSSAIN *v.* EMPEROR (1917).

22 C. W. N. 1005

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 408**—*Embezzlement as a clerk or servant—Misjoinder of charges.* A station master on the East Indian Railway, under an arrangement with the Company received a fixed allowance in respect of the marking, loading and unloading work at his station and used to engage his own men for that purpose. One of such men, engaged as a marksman, was first allowed to keep certain registers, which it was the duty of the station master to maintain, and next allowed to receive cash payments and make entries in the cash register. Whilst so employed, he received a sum of Rs. 5-10-0 as an overcharge or demurrage in respect of certain goods which passed through his hands, and appropriated the same. To this sum, however, the Railway Company made no claim. He was also alleged to have received and appropriated to his own use two other sums of money under somewhat similar circumstances. In respect of these three sums he was tried and convicted on three counts under s. 408 of the Indian Penal Code: *Held*, that the offence, if any, committed with regard to the sum of Rs. 5-10-0 did not fall within s. 408 at all, and, this being so, the jointer of the three charges in one trial was illegal. EMPEROR *v.* KARIM-UD-DIN (1918).

I. L. R. 40 All. 565

——— **s. 411**—*Receiving stolen property—Presumption as to knowledge of person in whose possession stolen property found after considerable lapse of time—Criminal Procedure Code (Act V of 1898), s. 35—Concurrent sentences.* Where in a case under s. 411, Indian Penal Code, the stolen property was found in the possession of the accused more than three months after the theft: *Held*, that having regard to the length of time there was no presumption that the accused knew or had reason to believe the property to be stolen. An order directing sentences passed in two separate trials against the same accused to run concurrently is illegal. JOEENULLAH BEPRAI *v.* THE KING-EMPEROR (1918) . . . **22 C. W. N. 597**

——— **ss. 415, 417**—*Cheating.* The petitioner proposed to the father of a girl for the hand of his daughter and obtained his consent and was admitted into his house. Subsequently information was received by the father that the petitioner was a married man; this the petitioner admitted to be true. Shortly after the daughter who was major left the father's protection of her own accord and went to the petitioner. On the complaint of the parents the petitioner was convicted of cheating under s. 417, Indian Penal Code: *Held*, that the facts did not bring the case within s. 417 read with s. 415, Indian Penal Code. That looking at the natural result of the deception that had been undoubtedly practised and that only, between the date the father gave his consent and the date when it became known to him that the petitioner was a married man, and on the facts and circumstances of the case, it could not be said that any damage or harm was done to the mind or reputation of the parents and consequently the charge failed. MILTON *v.* SHERMAN (1918) . **22 C. W. N. 1001**

——— **s. 420**—

See CRIMINAL PROCEDURE CODE ACT (V OF 1898), s. 562.

I. L. R. 41 Mad. 533

——— **s. 441**—*Criminal trespass—Necessary constituents of offence.* Where a person is found in the house of another in circumstances which would *primâ facie* indicate that the offence of criminal trespass as defined in s. 441 of the Indian Penal Code had been committed, and sets up the defence that he did not enter the house with any of the intents referred to in the section, but in pursuance of an intrigue with a female living there, it is the duty of the trying Court to give accused an opportunity of substantiating such defence. If the accused succeeds in showing that his presence in the house was in consequence of an invitation from or by the connivance of a female living in the house with whom he was carrying on an intrigue, and that he desired that his presence there should not be known to the person in possession, then he cannot be convicted of criminal trespass. If, however, it is shown that the person in possession of the house has expressly prohibited the accused from coming to the house, an intent to annoy may be legitimately inferred. The following cases were referred to:—*Balmakand Ram* v. *Ghansamram, I. L. R. 22 Calc. 391, Premanundo Shaha* v. *Brindabun Chung, I. L. R. 22 Calc. 944, Emperor* v. *Lakshman Raghunath, I. L. R. 26 Bom. 558, Emperor* v. *Mulla, I. L. R. 37 All. 395, Emperor* v. *Gaya Bhar, I. L. R. 38 All. 517.* EMPEROR *v.* CHHOTE LAL (1917).

I. L. R. 40 All. 221

——— **ss. 441, 448**—*Criminal Trespass—Finding that the trespass was committed with one of the intents specified in the section, whether necessary—Knowledge of the consequences of the trespass, whether sufficient to inculpate. Held*, by the Full Bench (AYLING, *J.*, differing):—Trespass is an offence under s. 441, Indian Penal Code, *only* if it is committed with one of the *intents* specified in the section and proof that a trespass committed with some other object was *known* to the accused to be likely or certain to cause insult or annoyance is insufficient to sustain a conviction under s. 448, Indian Penal Code. Distinction between 'intention' and 'knowledge of likelihood,' pointed out. *Queen-Empress* v. *Rayapadayachi, I. L. R. 19 Mad. 240*, followed. *Emperor* v. *Lakshman, I. L. R. 26 Bom. 558*, and the view of BENSON, *J.*, in *Sellamuthu Servaigaran* v. *Pallamuthu Karuppan, I. L. R. 35 Mad. 186*, not followed. *Per* AYLING, *J.* A mere knowledge that the trespass is likely to cause insult or annoyance does not amount to an intent to insult or annoy within s. 441, Indian Penal Code: but where the trespasser knows that his trespass is practically certain in the natural course of events to cause insult or annoyance, it is open to the court to infer an intent to insult or annoy. It is a question of fact whether this presumption of intent is displaced by proof of any independent object of the trespass. VULLAPPA *v.* BHEEMA RAO (1917).

I. L. R. 41 Mad. 156

——— **s. 494**—*Offence triable by Court of Session—Accused discharged—Order directing complainant to pay compensation—Criminal Procedure Code, s. 250—Judgment written by Magistrate.* S. 250 of the Code of Criminal Procedure is not applicable where the charge which is being inquired into by a Magistrate is one which is exclusively triable by a Court of Session. Neither in such a case is the Magistrate empowered to write a judgment; all that he is empowered to do is to records reasons for a discharge, if he make such an order, and to pass the order of discharge. *Fattu* v. *Fattu*,

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— s. 494—*concld.*

I. L. R. 26 All. 564, referred to. HET RAM *v.* GANGA SAHAI (1918) . . **I. L. R. 40 All. 615**

——— s. 499—

See EVIDENCE ACT (I OF 1872), s. 132.
I. L. R. 40 All. 271

PENALTY CLAUSE.

See INSTALMENT DECREE.
I. L. R. 42 Bom. 304

PENSIONS ACT (XXIII OF 1871).

——— s. 4—*Kulkarni vatan—Land revenue assigned for the office of Kulkarni—Suit for a share in the revenue—Civil Court—Jurisdiction.* A suit by a member of a Vatan family for a declaration of his right as owner of a certain share in the land revenue assigned for the purpose of supporting the office of Kulkarni, is a suit falling within the purview of s. 4 of the Pensions Act, 1871, and is not maintainable without a certificate from the Collector. BALKRISHNA SAMBHAJI *v.* DATTATRAYA MAHADEV (1917).
I. L. R. 42 Bom. 257

PERGANA REGISTER.

See LAKHERAJ LANDS.
I. L. R. 45 Calc. 574

PERJURY.

——— abetment of, before Magistrate—

See CRIMINAL PROCEDURE CODE (ACT V 1898), s. 195. **I. L. R. 42 Bom. 190**

PERMANENCY OF RENT.

——— presumption of—

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 930

PERSONAL DECREE.

——— against sub-mortgagee—

See MORTGAGE . **I. L. R. 45 Calc. 702**

PERSONAL LIABILITY.

See EXECUTOR . **I. L. R. 45 Calc. 538**

PESHKOSH.

1. ——— *Abwab—Antiquity and purpose of payment—Contractual foundation—Bengal Tenancy Act (VIII of 1885), ss. 74, 30 (c)—Public Demands Recovery Act (Beng. I of 1895).* Where the Collector in execution of a certificate issued under the Public Demands Recovery Act, realised from the plaintiffs certain charges described as *peshkosh* levied on two estates from time immemorial, and the plaintiff sued for a declaration that it was illegal and prayed for the cancellation of the certificate for the refund of the amount thereunder, and for a perpetual injunction restraining the defendant from levying the *peshkosh* in future: *Held*, that *peshkosh* could not be regarded as an imposition in the nature of an *abwab* within the meaning of the various provisions enacted on that subject. Such payment came out of the land and the right there to was an interest in the land to which a title might be made by prescription: *Held*, also, that the peculiar situation and character of the land and antiquity and purpose of the payment all pointed to a legitimate, contractual foundation. *Udoy Narain Jana* v. *The Secretary of State for India in Council, (1915)*

PESHKOSH—*concld.*

S. A. No. 44 of 1912 (unreported), referred to. LAKSHMI NARAYAN ROY *v.* SECRETARY OF STATE FOR INDIA (1918) . . **I. L. R. 45 Calc. 866**

2. ——— *Peshkosh or annual sum levied by Government for upkeep of embankment, if abwab.* An annual sum levied by Government for the upkeep of embankments is not an *abwab*. Long-continued payment from time immemorial which in itself is a title in the recipient of the payment is a good and sufficient basis of the claim. UDOY NARAIN JANA *v.* SECRETARY OF STATE FOR INDIA (1915) . **22 C. W. N. 823**

PETITION OF COMPROMISE.

See COMPROMISE . **I. L. R. 45 Calc. 816**

PLAINT.

See AMENDMENT OF PLAINT.

See CIVIL PROCEDURE CODE (1908), O. VI, R. 14 . . **I. L. R. 40 All. 147**

——— construction of—

See SPECIFIC RELIEF ACT (I OF 1877), S. 9 . . **I. L. R. 40 All. 637**

PLEADER'S FEES.

See COSTS . . **I. L. R. 40 All. 515**

PLEADINGS.

See ABANDONMENT OF HOLDING.
22 C. W. N. 853

See EVIDENCE ACT (I OF 1872), S. 105.
I. L. R. 40 All. 284

PLEDGE.

See CONTRACT ACT (IX OF 1872), S. 176.
I. L. R. 40 All. 522

See CONTRACT ACT (IX OF 1872), SS. 178, 179 . . **I. L. R. 42 Bom. 205**

——— of shares in a company—

See COMPANY . **I. L. R. 42 Bom. 159**

POLICE.

——— custody—confession—

See EVIDENCE ACT (I OF 1872), S. 26.
I. L. R. 42 Bom. 1

POSSESSION.

——— presumption arising from—

See LAKHERAJ LANDS.
I. L. R. 45 Calc. 574

——— suit for—

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 45 Calc. 685

See EX PARTE DECREE.
I. L. R. 45 Calc. 920

POSSESSORY SUIT.

——— *Specific Relief Act (I of 1877), s. 9—Second appeal—Civil Procedure Code (Act V of 1908), s. 102—Review.* Where in a suit under s. 9 of the Specific Relief Act, judgment was purported to be passed against five defendants but the decree was drawn up against one defendant only who alone contested the suit, and the decree-holder applied for execution against all the defendants, the Court dismissed the application on the ground that the decree was against one defendant only; on appeal the District Judge allowed

POSSESSORY SUIT—*concld.*

execution to proceed against all the defendants, but on a subsequent application for review he discharged his original order on the ground of jurisdiction under s. 9 of the Specific Relief Act : *Held*, that an application in execution proceedings was included in the term " suit " in s. 9 of the Specific Relief Act, and an appeal to the District Judge from an order of the Court of first instance was incompetent and the application for review equally so. *Thomas Souza* v. *Gulam Moidin Beari, I. L. R. 26 Mad 438, Moufuz Ali* v. *Birj Nand Kirat, (1915), P. L. R. 45, Anund Chunder Roy* v. *Sidhy Gopal Misser 8 W. R. 112, Gora Chand Misser* v. *Baykanto Narayan Singh, 12 B. L. R. 261, Din Dayal* v. *Patrakhan, I. L. R. 18 All. 481, Narayan Parmanand* v. *Nagindas Bhaidas, I. L. R. 30 Bom. 113, Mavula Ammal* v. *Mavula Maracoir, I. L. R. 30 Mad. 212, Shyama Charan Mitter* v. *Debendra Nath Mukerjee, I. L. R. 27 Calc. 484, Minakshi Naidu* v. *Subramaniya Sastri, I. L. R. 11 Mad. 26, L. R. 14 I. A. 160, Sasi Bhusan Mookerjee* v. *Radha Nath Bose, 20 C. L. J. 433*, and *Profulla Krishna Deb* v. *Nasibannesa Bibi, 24 C. L. J. 331*, referred to. KANAI LAL GHOSE *v.* JATINDRA NATH CHANDRA (1917) . **I. L. R. 45 Calc. 519**

POSTING OF A DEMAND DRAFT.

See SALE OF GOODS.
I. L. R. 42 Bom. 16

PRACTICE.

See AMENDMENT OF PLAINT.
I. L. R. 45 Calc. 305

See CRIMINAL PROCEDURE CODE, S. 437.
I. L. R. 40 All. 416

See EXAMINATION ON COMMISSION.
I. L. R. 45 Calc. 697

See MISJOINDER . **I. L. R. 45 Calc. 111**

See PRIVY COUNCIL.
I. L. R. 40 All. 497

See REVIEW . **I. L. R. 45 Calc. 60**

See SPECIFIC RELIEF ACT (I OF 1877), S. 9 . . **I. L. R. 40 All. 637**

——— **award of Court—**

See ANCIENT MONUMENTS PRESERVATION ACT (VII OF 1904), SS. 10, 21.
I. L. R. 42 Bom. 100

PRACTICE AND PROCEDURE.

See COMMISSION AGENCY.
I. L. R. 45 Calc. 138

PRE-EMPTION.

See MAHOMEDAN LAW—PRE-EMPTION.

——— **suit for—**

See COURT FEES ACT (VII OF 1870). S. 7(vi) . . **I. L. R. 40 All. 353**

1. ——————— *Custom — Wajib-ul-arz—Right of pre-emption acquired by means of imperfect partition of the village.* There being a pre-existing custom of pre-emption in a village, a right of pre-emption may arise in favour of an individual co-sharer just as much by the creation of a new patti by imperfect partition as by purchase by the co-sharer of a share in the patti. *Mahadeo Prashad Sahu* v. *Jaipal Raut, 8 Indian Cases, 867*, dissented from. LALTA PRASAD CHAUDHRI *v.* GOKUL PRASAD (1918).
I. L. R. 40 All. 617

PRE-EMPTION—*contd.*

2. ——————— *Wajib-u l-arz—Custom—Mortgage by conditional sale.* In 1895 a mortgage was made consolidating previous mortgages of the years 1892, 1893 and 1894. In 1906 a suit was instituted on the mortgage, which was construed as a mortgage by way of conditional sale. A decree for foreclosure was obtained, and in 1911, the decree was made absolute. Shortly afterwards, possession was obtained under this decree. In 1914 a suit was brought claiming to get possession by virtue of a custom set forth in the wajib-ul-arzes. The clause relating to pre-emption was as follows :—" If a *pattidar* wishes to transfer his share by sale or mortgage, he should do so, first, to another *pattidar* of the same *thok*, and in case of his refusal, to the *pattidars* of another *thok* of the village. If the *pattidar* wants to sell his share to a stranger by entering an excessive and fictitious price, the *pattidar* having the right of pre-emption shall be entitled to acquire the property on payment of the price awarded by the arbitrators :" *Held*, that, having regard to the whole context of the wajib-ul-arzes the " sale " mentioned wherein for the purpose of giving rise to a right of pre-emption according to custom meant a voluntary sale, and the wajib-ul-arzes did not give him a right of pre-emption under the circumstances under which the mortgagee became the owner of the property. *Alu Prasad* v. *Sukhan, I. L. R. 3 All. 610*, distinguished. SUNDAR KUNWAR *v.* RAM GHULAM (1918) . . **I. L. R. 40 All. 626**

3. ——————— *Wajib-ul-arz—Property to be sold to co-sharer first—Sale to stranger —" Refusal to purchase."* As a general rule the custom as to pre-emption as evidenced by the record in the wajib-ul-arz, is that where a co-sharer wishes to sell his property he must first offer it to another co-sharer and if the co-sharer refuses to purchase, he is entitled to go to a stranger. Where the custom proved is of this nature, if the co-sharer (vendor) offers the property to another co-sharer and such co-sharer refuses to purchase on the ground that he has no money or is unwilling for any other reason to purchase, the owner of the property is entitled to go and sell it to a stranger, and he is not obliged, after he has made a definite agreement with the stranger, to return and offer the property a second time to the co-sharer. *Naunihal Singh* v. *Ram Rattan, I. L. R. 39 All. 127*, and *Nathi Lal* v. *Dhani Ram, 15 A. L. J. 315*, followed. *Munawar Husain* v. *Khadim Ali, 5 A. L. J. 331*, and *Kanhai Lal* v. *Kalka Prasad, I. L. R. 27 All. 670*, not followed. SHAMSHER SINGH *v.* PIARI DAT (1918).
I. L. R. 40 All. 690

4. ——————— *Right of, in involuntary sales : Held* by the Full Bench :—In the absence of any statutary reservation of the right, a right of pre-emption does not exist in cases of involuntary sales ; hence a Malabar otti mortgagee has no right of pre-emption against a purchaser in Court auction of the mortgaged property and he is not entitled to any notice of the intended Court sale or of the price fetched at the sale. VASUDEVAN MOOSAD *v.* ITTIRARICHAN NAIR (1918).
I. L. R. 41 Mad. 582

5. ——————— *Purchases made by vendee on different dates—Suit to pre-empt first sale only—Vendee claiming to be a co-sharer in virtue of second purchase—Suit not maintainable.* The defendant purchased shares in a village on two different dates. The plaintiff sued to pre-empt

PRE-EMPTION—*concld.*

the earlier sale, but no suit was brought in respect of the second sale: *Held*, that the suit was not maintainable. CHABRAJ SINGH *v.* MAHESH NARAIN SINGH (1918) . . . **I. L. R. 40 All. 572**

PREFERENCE SHAREHOLDERS.

See COMPANY . **I. L. R. 42 Bom. 579**

PRELIMINARY DECREE.

See HINDU LAW—PARTITION.
I. L. R. 42 Bom. 535

PRESCRIPTION.

——— non-riparian owner—

See EASEMENTS ACT (V OF 1882), SS. 2 (*c*) AND 17 (*c*) . **I. L. R. 42 Bom. 288**

PRESENTATION.

——— for registration—

See REGISTRATION ACT (XVI OF 1908), SS. 32, 33, 71, 73, 75, 87, 88.
I. L. R. 40 All. 434

PRESIDENCY MAGISTRATE.

——— jurisdiction of—

See COMPANY . **I. L. R. 45 Calc. 490**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——— s. 38—*New trial—Full Court—Difference of opinion on questions of fact—Powers of interference—Powers not restricted to questions of law only—Jurisdiction.* *S* and *D* filed cross suits in the Presidency Small Cause Court. The trial Judge allowed *S's* suit and dismissed that of *D*. *D* obtained a Rule for new trial and the same coming up for argument before the Chief Judge and the trial Judge, there was a difference of opinion between the learned Judges on questions of fact. In this division the order of the Chief Judge prevailed with the result that *D's* claim was wholly allowed and that of *S* disallowed. Against this order *S* applied in revision to the High Court contending that under s. 38 of the Presidency Small Cause Courts Act, 1882, the Full Court had no jurisdiction to make the order because they had no appellate powers on a question of fact and upon such questions their powers of interference were limited to cases where the judgment of trial Court was manifestly against the weight of evidence: *Held*, that the Full Court had jurisdiction as the powers conferred under s. 38 of the Presidency Small Cause Courts Act, 1882, were not restricted to interference on questions of law only. *Per* BATCHELOR, ACTING C. J. There is nothing in the wording of the section which suggests that the Legislature intended to confine the powers thus generally granted to particular cases where questions of law are involved, nor can it be accurately said that the powers of interference are only to be used where the original judgment is manifestly against the weight of the evidence. SONOO NARAYAN *v.* DINKAR JAGANNATH (1917).
I. L. R. 42 Bom. 80

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

——— ss. 36, 51, 55—*Insolvency Rules, Calcutta, 5 (d)—Jurisdiction of Insolvency Court to enquire into fraudulent transfer of property and declare same void, on application under s. 36—Suit for title for setting aside order under s. 36—S. 26, Insolvency Act of 1848 (11 and 12 Vict., c. 21)—13 Eliz., c. 5, principle of—Evidence of insolvent, if admissible against transferee of property in view of insolvency—Burden of proof on person claiming by such transfer—Transfer by insolvent, when good—Transfer or assignment by insolvent, when fraudulent.* Under the Presidency Towns Insolvency Act (III of 1909) the Insolvency Court has, on an application by the Official Assignee, jurisdiction under s. 36 to inquire as to whether any sale of property by an insolvent is fraudulent or void and, if so, to make an order for the delivery of such property to the Official Assignee. Any one aggrieved by such an order might bring a regular suit to vindicate his title. SEEHASE, *Re* A. F. C. (1917).
22 C. W. N. 335

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld.*

——— ss. 36, 51, 55—*concld.*

PRESUMPTION.

See DEPOSITION . **I. L. R. 45 Calc. 825**

See HINDU LAW—ADOPTION.
I. L. R. 42 Bom. 277

——— ancient and uninterrupted user—

See EASEMENTS ACT (V OF 1882), SS. 2 (*c*) AND 17 (*c*) . **I. L. R. 42 Bom. 288**

PREVAILING RATE.

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 930

PRINCIPAL AND AGENT.

See CONTRACT ACT (IX OF 1872), SS. 178, 179 . . **I. L. R. 42 Bom. 205**

See SALE OF GOODS.
I. L. R. 42 Bom. 16

——— *Ordinary money account—Lending of money to persons to whom agent is not authorized to lend—Suit for account—Limitation Act (IX of 1908), Arts. 89 and 90—Termination of agency.* A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorized to lend, is a suit for an ordinary money account and is governed by Art. 89 and not Art. 90 of the Limitation Act. The question when an agency terminates, is a question of fact. *Great Western Insurance Co.* v. *Cunliffe, 9 Ch. Ap. 525*, distinguished. *Venkatachalam* v. *Narayanan, I. L. R. 39 Mad. 376*, referred to. MUTHIAH *v.* ALAGAPPA (1917).
I. L. R. 41 Mad. 1

PRINTER.

——— liability of—

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

PRIOR MORTGAGE.

See MORTGAGE . **I. L. R. 40 All. 407**

PRIVATE DEFENCE.

See EVIDENCE ACT (I OF 1872), s. 105.
I. L. R. 40 All. 284

PRIVATE FISHERIES ACT (II OF 1889).

——— s. 3—*Conviction without ascertaining boundary of fishery which is in dispute and bonâ fides of accused, propriety of—Purcha, evidentiary value of—Certified copy of Rubakari, admissibility of.* The petitioner, a fisherman, was convicted

PRIVATE FISHERIES ACT (II OF 1889)— *concld.*

—— —— **s. 3**—*concld.*

under s. 3 of the Private Fisheries Act for having fished in a river. It was in dispute whether the river appertained to a Khas Mahal or to a mouzah belonging to the zemindars under the orders of whose ijaradars the petitioner acted. The complainant, the ijaradar under Government, produced a Government *purcha* or extract from a record-of-rights prepared under the Bengal TenancyAct and the defence produced a certified copy of a Rubakari issued by the Commissioner containing an adjudication of the disputed boundary. *Held*, that in the absence of a determination of the true boundary of the fishery and the *bonâ fides* of the petitioner the conviction was not proper. That the extract from the record-of-rights at most raised a rebuttable presumption in favour of the complainant. That the Magistrate's order that the Rubakari was inadmissible in evidence on the ground that a certified copy and not the original order was produced was wrong. RADHANATH KAIBARTA *v.* EMPEROR (1917) . **22 C. W. N. 742**

PRIVATE SALE.

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 45 Calc. 780

PRIVILEGE.

See LIBEL . **I. L. R. 40 All. 341**

PRIVILEGE OF WITNESS.

See EVIDENCE ACT (I OF 1872), S. 132.
I. L. R. 40 All. 271

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL, PRACTICE OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110, O. XLV, R. 5.
I. L. R. 42 Bom. 609

PRIVY COUNCIL, PRACTICE OF.

—— *Omission to appeal to High Court—Decision of a subordinate Court not submitted to High Court—Point taken in grounds of appeal to High Court but not pressed—Postponing appeal from interlocutory decision until appeal from final decree.* It is a well settled rule of practice of the Judicial Committee that an appeal when bringing up the actual decree of the High Court for review, shall not be allowed to ask to have it set aside on the ground that it has wrongly accepted a decision of the subordinate Court if he himself has never brought that decision before the High Court for its consideration. Such a request would be fair neither to the Court appealed from, nor to the Board appealed to. The High Court ought not to be liable to have its determination overruled upon matters never submitted to it. The Board ought not to be called on to adjudicate finally upon matters where they have not the advantage of knowing and weighing the view taken by the learned Judges of the High Court. This had nothing to do with waiting to question an interlocutory decision until an appeal is taken from a subsequent final decree. The same rule applies where, on appeal to the High Court, the point was mentioned in the notice of appeal, but the judgment of the High Court says of it that the appellants' advocate "stated that he did not desire to press it," and so no more is said about it. KALYAN DAS *v.* MAQBUL AHMAD (1918).
I. L. R. 40 All. 497

PRIZE COURT.

—— **adjudication by—**

See SALE OF GOODS.
I. L .R. 45 Calc. 28

PROBATE.

See COURT FEES ACT (VII OF 1870), SS. 19, viii, 191 ; SCH. I. No. 11, and SCH. III . . **I. L. R. 40 All. 279**

PROBATE AND ADMINISTRATION ACT (V OF 1881).

—— *Delay in taking out probate of a will, if justified by circumstances and reasons—Probate applied for on necessity arising.* Where a long time elapsed between the death of the testatrix and the date on which the will was put forward for probate, and the testatrix was an illiterate Hindu lady, the prior history of the case was worthy of consideration. When there were reasons for the delay in propounding the will, although in such a case the Court was bound to scrutinize the evidence very carefully, there was no rule of the law of evidence that such a will was incapable of being proved. BINODINI DEBYA *v.* HRIDAY NATH GHOSHAL (1917).
22 C. W. N. 424

—— **s. 5**—"*Deposited in Court*," *meaning of--Will proved in French Court and kept with Notary, if deposit within the meaning of section—Copy given by Notary, if authenticated copy within the meaning of section.* A French subject of Chandernagore executed a mystic will according to the provisions of the French Code. On his death a general legatee applied to the Court at Chandernagore for having the will deposited according to the French law. After the usual proceddings were taken the French Court recognised the will and made it over to a Notary with power to give copies to the parties. The trustees under the will applied to the District Judge of Hughly for letters of administration with a copy of the will annexed. *Held*, that s. 5 of the Probate and Administration Act does not require that the will should have been deposited once and remain in Court for all time. The fact that the will was deposited in the French Court and the Court had before it the original will at the time it made a judicial pronouncement as to the validity of the will under the French law was a sufficient deposit within the meaning of s. 5. That the French Court having so provided, a copy authenticated by the notarial seal was a properly authencated copy within the meaning of s. 5. SUSHILA-BALA DASSI *v.* ANUKUL CHANDRA CHOUDHURY (1918) . . . . . **22 C. W. N. 713**

PROCEDURE.

See CIVIL PROCEDURE CODE (1908), O. I, R. 3 ; O. XXIII, R. 1.
I. L. R. 40 All. 7

See CIVIL PROCEDURE CODE (1908), O. VI, R. 14 . **I. L. R. 40 All. 147**

See CIVIL PROCEDURE CODE (1908), O. IX, RR. 3, 6. **I. L. R. 40 All. 590**

See CRIMINAL PROCEDURE CODE, SS. 110, 123 . . . **I. L. R. 40 All. 39**

PROCEDURE—*concld.*

See CRIMINAL PROCEDURE CODE, s. 350. **I. L. R. 40 All. 307**

See CRIMINAL PROCEDURE CODE, s. 478. **I. L. R. 40 All. 32**

See PENAL CODE (ACT XLV OF 1860), s. 494 . . **I. L. R. 40 All. 615**

See REVIEW. . **I. L. R. 45 Calc. 60**

——— *Appeal to High Court —Jurisdiction—Record-of-rights—Standard of Measurement—Code of Civil Procedure (Act XIV of 1882), s. 584—Bengal Tenancy Act (VIII of 1885), s. 109A, Sub-s. (3).* The right of appeal to the High Court given by s. 109A, sub-s. (*3*), of the Bengal Tenancy Act, 1885, is subject to s. 584 of the Code of Civil Procedure, 1882, and can only be exercised upon the grounds therein mentioned. The High Court has, therefore, no jurisdiction under the sub-section to set aside the decree of a District Judge upon the ground that he had applied the wrong standard of measurement to land of which the rent was in question. NAFAR CHANDRA PAL *v.* SHUKUR (1918) . . . **L. R. 45 I. A. 183**

PROCESSION.

See SPECIFIC RELIEF ACT (I OF 1877), s. 42 . . **I. L. R. 42 Bom. 438**

PROFITS.

——— **suit for, against lambardar—**

See AGRA TENANCY ACT (II OF 1901), ss. 164, 166 . **I. L. R. 40 All. 246**

PROJECTION.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), ss. 70, 113, 122 . . **I. L. R. 42 Bom. 454**

PROMISE.

——— **breach of—**

See CONTRACT . **I. L. R. 42 Bom. 499**

PROMISSORY NOTE.

——— **executed by father before partition—**

See HINDU LAW—DEBT. **I. L. R. 41 Mad. 136**

1. ——— *Promissory note executed in Hyderabad State but stamped with British India Stamp—Hyderabad State Stamp Act, s. 35—Suit on the promissory note in British Indian Court —Maintainability of suit in British India—Lex Fori—Lex Loci Contractus.* A promissory note was executed in Hyderabad State. It was stamped with a British India stamp. A suit having been brought on the promissory note in a Court in British India, it was contended that the promissory note not having been stamped with the stamp required by the laws of the Hyderabad State, no suit will lie upon it in the British Indian Court. *Held*, that though the promissory note be inadmissible in evidence under Hyderabad State Stamp Act, that law did not declare the agreement as void and the agreement could, therefore, be sued upon and enforced in a Court in British India. *Bristow* v. *Sequeville, 5 Exch. 275*, relied on. If the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence, because it is not stamped, then the agreement may be used upon and enforced in a Court in British India; but if the law of the foreign country provides that, by reason of the want of stamp, the agreement itself which is contained in the unstamped document shall be void, then the plaintiff cannot succeed in a Court of British India. DHONDIRAM CHATRABHUJ *v.* SADASUK SAVATRAM (1918) . . . . **I. L. R. 42 Bom. 522**

PROMISSORY NOTE—*concld.*

2. ——— *In favour of the managing trustee of a charity—The trustee succeeded by another—Latter's right to sue on the note without any assignment or endorsement.* A promissory note executed in favour of a trustee can be sued on by his successor without endorsement or assignment, the Negotiable Instruments Act not affecting devolution of rights by operation of law. *Catherwood* v. *Chabaud, 1 B. & C. 150*, applied and followed. *Sowcar Lodd Govinda Doss* v. *Muneppa Naidu, I. L. R. 31 Mad. 534*, referred to. RAMANADHAN CHETTY *v.* KATHA VELAN (1917). **I. L. R. 41 Mad. 353**

PROOF.

See CUSTOM . **I. L. R. 45 Calc. 450, 835**

See CUSTOM OR USAGE. **I. L. R. 45 Calc. 285**

PROOF OF TITLE.

See EJECTMENT SUIT. **I. L. R. 42 Bom. 357**

PROPERTY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1908), s. 520. **I. L. R. 42 Bom. 664**

PROPRIETARY ESTATES VILLAGE SERVICE ACT (MAD. II OF 1894).

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, EXPL. **I. L. R. 41 Mad. 418**

PROSECUTION.

See JUDGES, PROSECUTION BY. **I. L. R. 45 Calc. 169**

PROVINCIAL INSOLVENCY ACT (III OF 1907).

See LIMITATION ACT (IX OF 1908), s. 29 (*1*) (*b*) . . **I. L. R. 41 Mad. 169**

——— **ss. 3, 43** (*2*)—*Subordinate Judge invested with jurisdiction under s. 3 declines to take action under s. 43* (*2*) *against insolvent—Whether appeal lies to District Judge against the order under s. 46—Creditor if an aggrieved person.* The appellant was adjudicated an insolvent by a Subordinate Judge invested with jurisdiction under the proviso to s. 3 of the Provincial Insolvency Act and thereafter certain creditors of the insolvent made applications before the Subordinate Judge to the effect that the insolvent had concealed certain properties and prayed that he should be punished under s. 43 (*2*). The Subordinate Judge after hearing the creditors and the insolvent rejected the applications, whereupon some of the creditors applied to the District Judge who, after examining witnesses on both sides, sentenced the insolvent to three months' simple imprisonment. *Held, per* TEUNON, *J.* The orders made by the Subordinate Judge while he has seisin of the case could be interefered with by the District Court only under the provisions of s. 46 which in the matters therein dealt with subordinates all other Courts to the District Court or under the powers conferred by the Code of Civil

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

———— **ss. 3, 33** (*2*)—*concld.*

Procedure in regard to Civil suits as provided in s. 47. That no appeal lay against the order of the Subordinate Judge declining to take action against the insolvent under s. 43 (*2*). *Per* NEWBOULD, *J.* The word "Court" in s. 43 of the Act does not mean the Court of original jurisdiction only, and the District Judge's order in this case was an original and not an appellate order. DIGENDRA CHANDRA BASAK *v.* RAMANI MOHAN GOSWAMI (1918) . . . **22 C. W. N. 958**

———— **ss. 5, 15, 16**—*Insolvency—grounds for dismissing petition to be adjudged an insolvent.* A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act, 1907, can be dismissed only upon one or other of the grounds mentioned in s. 15 of the Act. It is not a good ground for dismissing such a petition that the petitioner's brother, being joint with the petitioner, has not been made a party to it. *Chhatrapat Singh Dugar* v. *Kahray Singh Lachmiram, 15 A. L. J. 87,* and *Triloki Nath* v. *Badri Das, I. L. R. 36 All. 250,* referred to. NET RAM *v.* BHAGIRATHI SAH (1917) . **I. L. R. 40 All. 75**

———— **ss. 6, 15, 16**—*Insolvency—Petitioner examined and evidence taken—Case adjourned—Petitioner absent on adjourned date—Petition dismissed for want of prosecution.* When a petition for a declaration of insolvency has once been presented conformably to the requirements of Act No. III of 1907, the Court is bound, after completing the necessary inquiries, to come to a decision in respect of the various matters spoken of in s. 15 of the Act and either to dismiss the petition under the provisions of that section, or to make an order of adjudication. But it cannot dismiss the petition merely because, on an adjourned date the petitioner does not appear. LACHMI NARAIN DUBE *v.* KISHAN LAL (1918) . . **I. L. R. 40 All. 665**

———— **s. 16** (*1*)—*Adjudication by Official Receiver—No order vesting property in Receiver, effect of—Action for money had and received, scope of—Privity of plaintiff and defendant, necessity for—Nature of privity.* The Official Receiver in the insolvency of *R* put up for sale the debts of a firm in which *R* and the second, third and fourth defendants' were partners, and the first defendant purchased them from the Receiver and afterwards recovered a debt due to the firm. The plaintiff having attached three-fourths of the money so recovered by the first defendant in execution of a decree obtained by him against the second, third and fourth defendants for a debt due by the firm and having been appointed Receiver in the execution proceedings sued the first defendant to recover the said three-fourths of the money as money had and received to the use of the second, third and fourth defendants. *Held,* that the plaintiff had no cause of action against the first defendant, because in an action for 'money had and received' there must be, as shown by the English decisions, privity of a legally recognizable nature between the plaintiff and the defendant and no such privity existed in this case and that the suit also failed as regards the shares of the second and third defendants by reason of their adjudications as insolvents prior to the attachment. Scope of the action for money had and received, pointed out; English and Indian cases reviewed. *Sinclair* v. *Brougham,* [*1914*] *A. C. 398,* explained. *Sankunni* v. *Govinda, I. L. R. 37*

PROVINCIAL INSOLVENCY ACT (III OF 1970) —*contd.*

———— **s. 16** (*1*)—*concld.*

Mad. 381, referred to. *Per* SADASIVA AYYAR, *J.* While privity of *contract* between the parties is of course not necessary to sustain an action for money had and received, there must be what might be called some privity of a legally recognizable nature such as some knowledge of particular facts in the man who received, the money and some mistake or ignorance of fact on the part of the man who paid the money or some relation of trust and confidence between them on which the Court could fasten as creating the relation of principal and agent (though by fiction) between the plaintiff and the defendant. *Per* OLDFIELD, *J. Obiter:* It may be permissible in India as it is in England to sue only the solvent members of a firm when a decree is sought against it. *Hawkins* v. *Ramsbottam, 6 Taunton, 179,* referred to. RAMASAMI NAIDU *v.* MUTHUSAMI PILLAI (1918).

I. L. R. 41 Mad. 923

———— **s. 16** (*2*) **cl.** (*a*)—*Civil Procedure Code* (*1908*), *s. 60—Insolvency—Attachment of half the salary of the insolvent.* One of the creditors of a person who had been declared an insolvent by the Small Cause Court of Cawnpore, but who had since obtained employment in the Government Press in Calcutta, applied to the Court for attachment of half the insolvent's salary for the benefit of his creditors. *Held,* that it was no valid reason for rejecting the creditor's application that its allowance would not leave the insolvant enough to live on. *Ram Chandra Neogi* v. *Shyama Charan Bose, 18 C. W. N. 1050,* and *Tulsi Lal* v. *Girsham, 38 Indian Cases 410,* followed. DEBI PRASAD *v.* LEWIS (1918) . . . **I. L. R. 40 All. 213**

———— **ss. 16** (*c*), **18** (*3*)—*Property alleged to be held by stranger in benami for insolvent if may be recovered without suit—Judge's power to order inquiry by Receiver.* Where a creditor of an insolvent alleged that certain Government promissory notes were being held by the insolvent's brother in *benami* for the insolvent and the insolvent's brother denied that the insolvent had any title to the Government promissory notes and alleged that they were his own property; and the Judge called for a report on the matter from the Receiver. *Held,* that it was open to the Judge to direct the Receiver to enquire and report to him for his own information. That on receipt of such report, it was for the Judge to consider whether upon the facts before him, he should direct the Receiver to bring a suit in order that the question of title may be decided, or whether the case is so clear (that is to say, the title is not really in dispute) that it can be dealt with in the insolvency without the necessity of a suit. If the question of title be seriously in dispute the Judge should direct the Receiver to bring a suit to have the question determined. SATYA KUMAR MUKHERJI *v.* MANAGER BENARES BANK, LD. (1917) . . . . **22 C. W. N. 700**

———— **s. 18**—*Decree obtained by insolvent before adjudication—Attachment of decree—Effect of subsequent adjudication on right of attaching creditor to execute decree.* Where a decree has been attached by a creditor of the decree-holder and subsequently the decree-holder is adjudged an insolvent, the right to execute such decree vests in the receiver in insolvency, and is not retained by the attaching creditor. *Raghunath Das* v. *Sundar*

PROVINCIAL INSOLVENCY ACT (III OF 1970) —*contd.*

——— **s. 18**—*concld.*

Das Khetri, I. L. R. 42 Calc. 72, referred to. DAMBAR SINGH *v.* MUNAWAR ALI KHAN (1917). **I. L. R. 40 All. 86**

——— **s. 18** (*3*)—*Creditor alleging property of insolvent being kept in benami by his wife—Court if may summarily enquire into allegation—Proper procedure—Court to authorise Receiver to sue on creditor putting him in funds and indemnifying him for costs.* Where a creditor of an insolvent applied to the District Judge complaining that the insolvent had concealed certain properties by having them vested in the name of his wife and prayed that certain persons and the insolvent and his wife be examined in regard to the matter : *Held*, that such a summary inquiry is not supported by any provision of the Provincial Insolvency Act; and the Judge was right in refusing to order such an inquiry. But the creditor could not be told to bring a suit for title against the alleged *benamidar*. The proper procedure was for the creditor to apply to the Court to direct the Receiver to institute and continue a suit against the wife of the insolvent to recover the property in question, making it a condition precedent that the creditor so applying put the Official Receiver in funds and properly indemnify him against the costs of the suit, and the Court should made such an order if in its opinion the creditor has a *prima facie* case. JOY CHANDRA DAS *v.* MAHOMED AMIR (1917) . **22 C. W. N. 702**

——— **ss. 18** (*3*), **20**—*Transfer by insolvent challenged as benami—Judge, if may order transferee to be dispossessed without suit—Judge if may direct Receiver of insolvent's properties to hold a judicial inquiry—Receiver may report administratively—Judge when he directs a suit should order creditor to put Receiver in funds and indemnify him.* Where a transfer, dated the 16th March 1913, by a person who was adjudicated an insolvent on 11th February 1916 having been attacked in the interest of his creditors as *benami*, the Judge ordered the Receiver appointed to take over the insolvent's properties (who was not the Official Receiver appointed by the Local Government under s. 19 of the Provincial Insolvency Act) to enquire and report, and the Receiver after holding an enquiry of a judicial character submitted his report, which however the Judge did not accept, but directed the inquiry to be reopened in Court : *Held*, that the duties of an ordinary Receiver under s. 20 of the Act are executive in their character and the Receiver is not a Judicial Officer and has no jurisdiction to make anything in the nature of a judicial inquiry. S. 18 (*3*) of the Act is not intended to authorise the removal of any person whom the insolvent himself could not remove without the aid of legal proceedings. When the *benami* character of the title is admitted or when the veil is transparent, and the insolvent is in substantial beneficial possession, the Court may order the delivery of the property to the Receiver. But where the alleged *benamidar* is in possession claiming adversely to the insolvent, then any claim made by the Receiver or the creditor that the property is really the property of the insolvent can only be enforced by suit in the regular Courts. The Court may direct an administrative inquiry by the Receiver for the purpose of informing his mind and deciding what action should be taken, and if in the result he is of opinion that a suit should be brought, he should make the order on terms requiring the creditor at whose instance the suit is directed to put the Receiver in funds and indemnify against the costs of the suit. NILMONI CHOWDHURY *v.* DURGA CHARAN CHOWDHURY (1918) . **22 C. W. N. 704**

PROVINCIAL INSOLVENCY ACT (III OF 1970) —*contd.*

——— **ss. 18** (*3*), **20**—*concld.*

——— **ss. 20, 47**—*Sale by receiver of property alleged to belong to an insolvent—Property in possession of third person—Obstruction by such third person—Summary enquiry by District Judge—Order directing delivery of possession, legality of—'Proceedings' in s. 47 of the Act, meaning of.* Certain property alleged to belong to an insolvent was sold by the receiver under s. 20 of the Provincial Insolvency Act. The purchaser whilst attempting to take possession, was obstructed by the appellants who claimed to be in possession of the property as owners thereof. The District Judge, purporting to act under s. 47 of the Act, after a summary enquiry ordered possession to be given to the purchaser. *Held*, that the District Judge had no jurisdiction to pass such an order as s. 47 only lays down the procedure to be followed by the Insolvency Judge with regard to proceedings under the Act. *Held*, also, that the word 'proceedings' in s. 47 of the Act means the proceedings of the Court and not the act of the receiver under s. 20 of the Act. *Minatoonnessa Bibee* v. *Khatoonessa Bibee, I. L. R 21 Calc. 479,* and *Golam Hossein Cassim Arif* v. *Fatima Begam, 6 I. C. 300,* explained. *Cheda Lal* v. *Luchman Parshad, 37 I. C. 830,* approved. NARASIMHAYA *v.* VIRARAGHAVULU (1917). **I. L. R. 41 Mad. 440**

——— **s. 22**—*Insolvency—Execution of decree—Attachment—Objection of claimant to attached property disallowed—Judgment-debtors declared insolvent—Suit by claimant for declaration of title.* Certain property was attached in execution of a decree. *M*, claiming that the property attached belonged to her and not to the judgment-debtors filed an objection to the attachment. Her objection was disallowed. She then filed a suit for a declaration of her title, and, as the judgment-debtors had meanwhile been adjudicated insolvents, joined as a defendant the receiver of their property. *Held*, that the suit was maintainable and was not barred by s. 22 of the Provincial Insolvency Act, 1907. *Mul Chand* v. *Murari Lal, I. L. R. 36 All. 8,* distinguished. *Jhunku Lal* v. *Piari Lal, I. L. R. 39 All. 204,* referred to. MOHNI *v.* BAIJ NATH (1918) . . . . . **I. L. R. 40 All. 582**

——— **s. 23**—*Insolvency—Attachment of applicant's property prior to adjudication—Effect of adjudication on the attachment.* After an adjudication in insolvency, an attachment of property, though made before the adjudication, ceases to have any effect, and the property of the insolvent vests in the receiver, who is the person to maintain all proceedings. Where no receiver is actually appointed the Court is the receiver under s. 23 of the Provincial Insolvency Act. GOBIND DAS *v.* KARAN SINGH (1917) . . **I. L. R. 40 All. 197**

——— **ss. 24, 26, 36, 52**—*Rules—Official Receiver—Delegation of powers—Framing of schedule by Receiver—Enquiry, nature of—Order of Receiver, if judicial or final—Entry of name of a creditor in schedule—Subsequent application by Receiver to Court to expunge name—Power of Court, to entertain application.* An Official Receiver under the Provincial Insolvency Act in framing a schedule of creditors, does not decide judicially or finally upon contested

PROVINCIAL INSOLVENCY (III OF 1907)—*concld.*

———— **ss. 24, 26, 36, 52**—*concld.*

claims. Where, therefore, an Official Receiver passed an order upon the claim of a creditor of an insolvent to rank as a secured creditor under a mortgage which was disputed by another creditor, the action of the Receiver amounted only to an entry of the name of the creditor in the schedule framed under s. 24 of the Act, and did not preclude the Court from entertaining an application by the Receiver under ss. 26 and 36 of the Act to expunge the name of the creditor from the schedule. KHADIRSHAW MARAIKAR *v.* THE OFFICIAL RECEIVER, TINNEVELLY (1917).

I. L. R. 41 Mad. 30

———— **s. 36**—*Proceeding questioning transfer —Onus.* In a case arising under s. 36 of the Provincial Insolvency Act, the burden of proving that the transaction impugned was carried out in good faith and for valuable consideration is on the transferee. BASIRUDDIN THANADAR *v.* MOKIMA BIBI (1918) . . . . **22 C. W. N. 709**

———— **ss. 46, 47 (1) and (2)**—*Appeal under s. 46, filed out of time—Dismissal of memorandum of objections, right of respondent to file—Civil Procedure Code, s. 108 (2), O. XLI, r. 22.* S. 47(2) of the Provincial Insolvency Act and s. 108 (2), Civil Procedure Code, apply the procedure of the Civil Procedure Code to appeals filed under s. 46 of the Provincial Insolvency Act; hence a respondent in such an appeal is entitled to file a memorandum of cross-objections under O. XLI, r. 22, Civil Procedure Code. When an appeal is dismissed as filed out of time, a memorandum of objections filed by a respondent under O. XLI, r. 22, cannot be heard. *Ramjivan Mal* v. *Chand Mal, I. L. R. 10 All. 587*, followed. Decisions on O. XLI, r. 22 (formerly s. 561, C. P. C.), reviewed. ALAGAPPA CHETTIAR *v.* CHOCKALINGAM CHETTIAR (1918).

I. L. R. 41 Mad. 904

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

———— **s. 35**—

See CIVIL PROCEDURE CODE (1908), S. 24.

I. L. R. 40 All. 525

———— **Sch. II, Art. 7**—*Suit involving apportionment of rent, whether a suit of small cause nature —Transfer of Property Act (IV of 1882), ss. 2 (d) and 36, applicability of, to transfer in execution.* A suit the determination of which involves apportionment of rent by the Court, falls within art. 7 of the second schedule of the Provincial Small Cause Courts Act and is exempted from the cognizance of a Provincial Small Cause Court. Though according to s. 2 (*d*) of the Transfer of Property Act, the Act does not apply to sales in execution, yet the principle of s. 36 of the Act which embodies a rule of justice, equity and good conscience can be applied and rent apportioned from day to day as between a lessor and the transferee of his right in execution in the course of a year of the lease. RANGIAH CHETTY *v.* VAJRAVELU MUDALIAR (1917).

I. L. R. 41 Mad. 370

———— **Sch. II, Art. 13**—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 4, 7, 101, 102 AND 120.

I. L. R. 41 Mad. 528

———— **Sch. II, Art. 13**—*Small Cause Court —Jurisdiction—Suit by zemindar to recover a haqq, cess or due from tenant. Held,* that a suit by a zemindar to recover from one of his tenants dues payable in kind under the provisions of the village wajib-ul-arz was excluded from the jurisdiction of a Court of Small Causes by art. 13 of the second schedule to the Provincial Small Cause Courts Act, 1887. BALDEO *v.* PANNA LAL (1918).

I. L. R. 40 All. 663

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

———— **Sch. II, Art. 13**—*concld.*

———— **Sch. II, Arts. 15, 24**—*Suit to enforce part of an award partitioning immoveable properties, whether cognisable in a Court of Small Causes.* A suit to enforce an award is in essence a suit for specific performance of a contract and is excluded from the cognisance of a Small Cause Court by Art. 15 of the Provincial Small Cause Courts Act. A suit to enforce part of an award which amongst other things partitions immoveable properties if it lies at all, does not lie in a Provincial Court of Small Causes. KUNJA BEHARY BARDHAN *v.* GOSTA BEHARY BARDHAN (1917) . **22 C. W. N. 66**

———— **Sch. II, Art. 31**—*Small Cause Court— Jurisdiction—Suit by joint owner to recover rent of a house received by the other joint owner—Money had and received—Revision—Objection to jurisdiction not raised in the Court below. Semble:* That a suit by one of two joint owners to recover from the other a share of the rent of a house received in the first instance by the defendant with the plaintiff's consent, is a suit for money had and received, and as such within the jurisdiction of a Court of Small Causes. But in any case, the question of jurisdiction not having been raised in the Court below and the case having apparently been correctly decided, the High Court was not bound to interfere in revision. *Ram Lal* v. *Kabul Singh, I. L. R. 25 All. 135*, followed. SUKH LAL *v.* NANNU PRASAD (1918) . . . . **I. L. R. 40 All. 666**

———— **Sch. II, Art. 31**— *Suit for mesne profits of a grove—Jurisdiction. Held,* that a suit for recovery of mesne profits of a grove from which the plaintiff had been wrongfully dispossessed is a suit the cognizance of which by a Court of Small Causes is barred by art. 31 of schedule II to the Provincial Small Cause Courts Act, 1887. *Prasadi Lal* v. *Imdad Husen, All. Weekly Notes, (1898) 10*, distinguished. *Sheo Bodh* v. *Surjan, 11 A. L. J. 238*, followed. DRIGPAL SINGH *v.* KUNJAL (1917).

I. L. R. 40 All. 142

———— **Sch. II, Art. 38**—*Suit relating to maintenance—Jurisdiction.* Plaintiff's father-in-law left by his will certain property to plaintiff's three brothers-in-law charged with the payment of Rs. 36 per annum to the plaintiff during her life. Subsequently the brothers-in-law agreed amongst themselves to divide their liability for payment of this annuity, so that each became liable individually for the payment of Rs. 12 per annum. *Held,* on suit brought by the annuitant to recover arrears of her maintenance allowance against one of her brothers-in-law, that the suit was a "suit relating to maintenance" and that the cognizance thereof by a Court of Small Causes was barred by art. 38 of sch. II to the Provincial Small Cause Courts Act, 1887. *Mahadeo Rai* v. *Deo Narain Rai, 2 A. L. J. 697*, and *Masum Ali* v. *Mohsin Ali, (1890) All. Weekly Notes, 201*, distinguished. MUNIR-UD-DIN *v.* SAMIR-UN-NISSA BIBI (1917) . **I. L. R. 40 All. 52**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— **Sch. II, Art. 113—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 100 . **I. L. R. 41 Mad. 374**

PROVISO TO SECTION.

——— **use of, to interpret section—**

See LAND IMPROVEMENT LOANS ACT (XIX OF 1883), s. 7 (*1*) (*c*).
I. L. R. 41 Mad. 691

PUBLIC DEMANDS.

——— *What is a proper notice —Onus of proper service—Public Demands Recovery Act (Beng. I of 1895), ss. 10, 31.* Service of notice under s. 10 of the Public Demands Recovery Act, 1895, must be effected in strict conformity with that section. Where service of notice is effected by fixing it on the outer door of the judgment-debtor's house, the onus is clearly upon the defendant relying on the notice to show that there was proper service as required by law. *Rakhal Chandra Rai Chowdhury* v. *The Secretary of State for India, I. L. R. 12 Calc. 603,* and *Jogeswar Saha* v. *Debi Prasad, 5 C. L. J. 555,* followed. NEMAI CHARAN DE *v.* SECRETARY OF STATE FOR INDIA (1917).
I. L. R. 45 Calc. 496

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895).

See PESHKOSH . **I. L. R. 45 Calc. 866**

——— **ss. 10, 31—**

See PUBLIC DEMANDS.
I. L. R. 45 Calc. 493

PUBLIC GAMBLING ACT (III OF 1867).

——— **s. 13**—*Gaming in public place—Seizure of money as well as instruments of gaming, illegal.* Where persons are found gambling in a public place is circumstances to which s. 13 of the Gambling Act, 1867, is applicable, although instruments of gambling, etc., may be seized by the police, there is no authority for the confiscation of money found with the persons arrested. *Emperor* v. *Tota, I. L. R. 26 All. 270,* followed. EMPEROR *v.* MATURWA (1918) . . **I. L. R. 40 All. 517**

PUBLIC OFFICER.

——— **notice of suit—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 80 . **I. L. R. 41 Mad. 792**

PUBLIC POLICY.

——— **agreement against—**

See CONTRACT ACT (IX OF 1872), s. 24.
I. L. R. 42 Bom. 339

PUBLIC SERVANT.

See PENAL CODE (ACT XLV OF 1860), ss. 332, 323 . **I. L. R. 40 All. 28**

PUBLIC STREET.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), ss. 70, 113, 122.
I. L. R. 42 Bom. 454

PUBLICATION.

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

PUBLICITY.

See BURMESE BUDDHIST LAW—ADOPTION.
I. L. R. 45 Calc. 1

PUNJAB LAWS ACT, 1872.

——— **s. 5—**

See CUSTOM . **I. L. R. 45 Calc. 450**

PURCHASE.

See TITLE, PROOF OF.
I. L. R. 45 Calc. 909

PURCHASE-MONEY.

——— **suit to recover—**

See CIVIL PROCEDURE CODE (1882), s. 315.
I. L. R. 40 All. 411

PURCHASER.

——— **title of—**

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 45 Calc. 765

PURDANASHIN LADY.

See EXAMINATION ON COMMISSION.
I. L. R. 45 Calc. 492, 697

——— *Deed executed by—what is proper explanation.* Where in the case of a purdanashin lady the draft of a deed of English mortgage was interpreted in Bengalee to her by her legal adviser by reading two to four lines at a time and it took about three hours to do so, and ten or twelve days afterwards it was executed by her, when it was again explained to her by giving out the substance, it was held that the deed was duly executed. SHYAMPEARY DASYA *v.* THE EASTERN MORTGAGE AND AGENCY CO., LD. (1917).
22 C. W. N. 226

PUTATIVE FATHER.

——— **right of, to inherit his illegitimate son's property—**

See HINDU LAW—INHERITANCE.
I. L. R. 41 Mad. 44

PUTNI.

See PATNI.

PUTNI LEASE.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 45 Calc. 685

PUTNI REGULATION (VIII OF 1819).

——— **s. 13—**

——— *Deposit, not voluntary, to prevent patni sale—Suit to recover on the ground of intended sale being illegal, if maintainable—Chota Nagpur Encumbered Estates Act (IV of 1876), preamble, ss. 2, 4, 5, 8, 9, 10, 16, 17, 18, 19 and 23 —The Act, if applies to land outside Chota Nagpur— Intention of the Act.* The rule which prevents a person from recovering back money which he has paid on a claim in legal proceedings to which he might have set up a defence but has failed to do so has no application where a deposit is made in order to stop a *patni sale.* The proceedings before the Collector at a *patni* sale are of an administrative rather than a properly judicial character. The zemindar who has the power of compelling a sale is to exercise this power through the instrumentality of the Collector himself who acts not magisterially but ministerially, and who has, in the true view of his functions, no capacity to give effect to any enquiry he may make into title comparable to the capacity possessed by an ordinary judicial tribunal. The Chota Nagpur Encumbered Estates Act is not a statute analogous to the Bankruptcy Act, the controlling purpose of which

PUTNI REGULATION (VIII OF 1819)—*concld.*

——— **s. 13**—*concld.*

is provision for creditors in a liquidation. Its primary intention is that of providing, by a measure of local application, for the relief of the burdens affecting the land within Chota Nagpur owned by a class of landholders there. The Act has therefore no application to immoveable property outside Chota Nagpur. Any provision which affects rights to enforce, in jurisdictions outside it, personal debts or liabilities, are merely ancillary to the main purpose of the Act. JYOTI PRASHAD SINGH *v.* KUMUD NATH CHATTERJI (1918).

22 C. W. N. 1009

PUTNI TENURE.

——— *Successive rent decrees —Sale in execution of last decree—Zemindar, if has a charge on surplus sale-proceeds for amounts of previous decrees—Putni Regulation (VIII of 1819), ss. 3 (3), 17 (3)—Bengal Tenancy Act (VIII of 1885), ss. 65, 165, 195—(c)—Transfer of Property Act (IV of 1882), ss. 73, 100—Nature of charge for arrears of rent. Per* N. R. CHATTERJEE, *J.* (Smither, J., *contra*). Not only can a putni tenure be sold under the Bengal Tenancy Act, but decrees for rent for earlier periods can be enforced against the surplus sale-proceeds of a putni tenure when sold in execution of a decree for rent under the provisions of the Bengal Tenancy Act. *Per* SMITHER, *J.* Under s. 3, cl. (*3*) of the Putni Regulation, the zemindar has the right to hold the putni answerable for any arrear of his rent, but only subject to the limitation specified in s. 17, cl. 3 of the Regulation, under which if the zemindar should have failed to avail himself of the process which the Regulation provides, arrears of a period before the current year or the year immediately expired become mere personal debts and his charge in respect of such arrears is time-barred. The zemindar has therefore no charge for the amounts covered by two previous decrees for rent upon the surplus proceeds of a sale in execution of a later decree, for rent. The words "public auction" in s. 3, cl. (*3*) of the Regulation should be taken to apply to any "public auction" and not limited to mean an auction under the Regulation, if there can be any public auction of a putni other than a public auction under the Regulation. *Per* N. R. CHATTERJEA, *J.* The provisions of s. 17, cl. (*3*) of the Regulation, *viz.*, that the former balances beyond those of the current year (or of that immediately expired if the sale be at the commencement of the following year) will be mere personal debts of the putnidar, applies only when the putni is sold under the Putni Regulation. The words "sale by public auction" in s. 3, cl. (*3*) of the Regulation refers to the summary sale under the Putni Regulation which alone is dealt with by it. The provisions of that section or of s. 17 have nothing to do with a sale held under the general law. Rent is a first charge under the Putni Regulation as well as under the Bengal Tenancy Act and there is no conflict between the two so far as the question whether rent constitutes a first charge is concerned. The Regulation provides for a summary sale only and in so far as such a sale is concerned the provisions of the Bengal Tenancy Act cannot affect such sales, or the provisions relating to the distribution of the sale-proceeds as laid down in the Regulation. With regard to sales under the general law, there is no inconsistency between the provisions of the Bengal Tenancy Act and the Putni Regulation, because the latter has

PUTNI TENURE—*concld.*

nothing to do with such sales, and the Bengal Tenancy Act supplements the provisions of the Regulation in matters not dealt with by it. If the zemindar has a first charge for rent under the Bengal Tenancy Act and the Regulation, although such charge in respect of antecedent balances may not, having regard to the provisions of s. 17 of the Regulation, be enforced against the surplus sale-proceeds when the putni is sold in a summary way under the Regulation, there is no reason why the zemindar should lose such charge under a decree for rent when the putni is sold under the Bengal Tenancy Act. The tenure itself having been sold in execution of a rent-decree, the charge was transferred to the surplus sale-proceeds on the principle embodied in s. 73 of the Transfer of Property which is a principle of justice, equity and good conscience. The charge which the landlord has in respect of his rent is not one created by law under s. 100 of the Transfer of Property Act. Such charge is not an encumbrance within the meaning of s. 161 of the Bengal Tenancy Act. SATYA SHANKAR GHOSHAL *v.* MONOMOHAN GUHA. (1917) . . . . . **22 C. W. N. 131**

Q

QUESTION OF FACT.

See CUSTOM OR USAGE.

I. L. R. 45 Calc. 285

QUESTION OF LAW.

See CUSTOM OR USAGE.

I. L. R. 45 Calc. 285

R

RAILWAY ADMINISTRATION.

——— *Liability of, in respect of goods consigned for carriage and delivery—Obligation to grant shortage certificate.* A Railway Company is under no liability to reweigh goods consigned to them for carriage and delivery and give a certificate of shortage, if the consignor alleges loss in the transit. JOGANATH MARWARI *v.* EAST INDIA RAILWAY CO. (1918) . . **22 C. W. N. 902**

RAILWAYS ACT (IX OF 1890).

——— **s. 72, sub-s.** (*2*)—*Risk Note, Form "B," framed under—Whether a consignee of goods covered by this Risk Note can make the Railway Administration liable for the loss thereof—Whether ss. 151, 152 and 161 of the Indian Contract Act (IX of 1872) will apply in such a case—S. 76 of the Indian Railways Act, whether it governs s. 72 and the contract in the Risk Note—Proof of negligence, onus on whom lies.* Where goods were consigned to a Railway Company for carriage at a reduced rate of freight and the senders executed a Risk Note in Form "B," and several bags forming part of the consignment were missing and could not be delivered to the consignee: *Held*, that in a suit for compensation for the missing bags, the defendant Railway Company would not be liable if the plaintiff (consignee) failed to prove that the loss was due to the wilful neglect of the Railway Adminis-

RAILWAYS ACT (IX OF 1890)—*concld.*

——— **s. 72, sub-s. (2)**—*concld.*

tration or to theft by, or to the wilful neglect of, its servants. *Held*, also, that such a case would be guided by the terms of the special contract, embodied in the Risk Note, Form "B," and not by ss. 151, 152 and 161 of the Indian Contract Act or the other provisions of the Indian Railways Act. EAST INDIAN RAILWAY CO. *v.* KANAK BEHARI HALDAR (1918) . . . **22 C. W. N. 622**

——— **ss. 72, 77**—*Duty of Railway Company, as a bailee, under the Indian Contract Act (IX of 1872)—Delivery of goods to person entitled but without production or delivery of railway receipt—Subsequent pledge of railway receipt—Suit by pledgee—Notice of claim, whether necessary—Damage, cause of.* The liability of a Railway Company under the Indian Railways Act in respect of goods consigned for carriage is at an end when the goods are delivered to a person rightfully entitled to them, even though he is not the consignee and even if the delivery is not made against the railway receipt. After delivery of the goods to the rightful person, the railway receipt ceases to be a symbol of goods and ceases to be negotiable. Hence an innocent endorsee for value of the railway receipt after delivery to such a person has no cause of action for damages against the Railway Company. A Railway Company is not under any duty to the public to insist upon the return of the railway receipt. *Held*, further, that delivery of goods by the Railway Company without getting in the railway receipt was not the proximate cause of the loss to the endorsee. *Barber* v. *Meyerstein*, *4 E. & Ir. App. 317*, followed. *Held*, also, that the suit was barred for want of notice under s. 77 of Indian Railways Act which applies to claims for compensation arising not only from non-delivery or accidental loss or destruction or deterioration of goods but also from wilful delivery to a person not entitled to them. The Indian Common Carriers Act III of 1865 and the Indian Railways Act are not in *pari materia* with the English Carriers Act of 1830 as to when notice of loss is necessary. Hence decisions under the English Act are not applicable to India. M. & S. M. RY. CO., LD. *v.* HARIDOSS BANMALIDOSS (1918).
I. L. R. 41 Mad. 871

——— **s. 122**—*Unlawful entry upon Railway and refusal to leave—Essence of offence.* Unlawful entry constitutes the basis of the offence under both clauses of s. 122 of the Railways Act. If the entry was lawful, refusal to leave on being desired to do so would not make the original entry unlawful, nor would it make a person guilty under cl. (2) which is but an aggravated form of the offence under cl. (1). KUMUD KANTA CHAKRABORTI *v.* KING-EMPEROR (1917) . . **22 C. W. N. 575**

RAJINAMA AND KABULIYAT.

——— *Registration—Registration Act (XVI of 1908), s. 90—Bombay Land Revenue Code (Bombay Act V of 1879), ss 74, 76.* Rajinamas and kabuliyats, governed by the Bombay Land Revenue Code (Bombay Act V of 1879), are not compulsorily registrable. They cannot in themselves be documents of transfer; but they are fairly conclusive evidence that a transfer has in fact been made. NARSO RAMAJI *v.* NAGAVA (1918).
I. L. R. 42 Bom. 359

RASH OR NEGLIGENT ACT.

See PENAL CODE ACT (XLV OF 1860), s. 336 . . **I. L. R. 42 Bom. 396**

RATEABLE VALUE.

See ASSESSMENT . **I. L. R. 42 Bom. 692**

RECEIVER.

See LEASE . **I. L. R. 45 Calc. 940**

——— *Irregular appointment of—Suit brought by such Receiver under authorisation of Court, if maintainable—Property of the Receiver's appointment, if can be challenged in the suit.* In a suit pending in the lower Court the High Court in appeal directed the appointment of a Receiver on taking proper security. The lower Court appointed a Receiver but took no security and authorised him to bring a suit against the respondent which was done. The suit was dismissed on the ground of invalidity of the Receiver's appointment. *Held*, that an order which is erroneous in law is not necessarily an order made without jurisdiction and the order for the appointment of the Receiver was operative in law. That the propriety of an order or decree made in a cause in which the Court has jurisdiction cannot be challenged collaterally and the lower Court was wrong in dismissing the suit on the ground that the Receiver was not competent to maintain in the action. BHAIRAB CHANDRA DUTT, *v.* NANDIRAM AGRANI (1917).
22 C. W. N. 520

RECEIVING STOLEN PROPERTY.

See AUTREFOIS ACQUIT.
I. L. R. 45 Calc. 727

RECITALS.

——— about the title—

See LEASE . **I. L. R. 42 Bom. 103**

RECORD OF RIGHTS.

——— correctness of—

See BENGAL TENANCY ACT, SS. 5, 103B.
I. L. R. 45 Calc. 805

——— *Presumption of correctness of—Finding of lower Appellate Court as to whether presumption rebutted not liable to be disturbed in second appeal.* In the record-of-rights the defendants were stated to be settled raiyats with liability to have their rents assessed. In a suit by the landlord for rent on declaration of title the first Court found that the suit was barred by limitation and adverse possession from an assertion of the defendants' right during the publication of the record-of-rights. The lower Appellate Court reversed this finding and held that the presumption as to the correctness of the record was not rebutted. *Held*, that the lower Appellate Court was entitled on the question of fact to hold that the mere fact that this adverse claim had been made was not sufficient to show that the entry in the finally published record was wrong and this finding was not liable to be challenged in second appeal. GOUR CHANDRA CHUCKERBUTY *v.* BIRENDRO KISHORE MANIKYA (1917) . . . **22 C. W. N. 449**

RECOUPMENT.

——— *Powers under Calcutta Improvement Act (Beng. V of 1911), ss. 2, 3, 36, 37, 39, 41 42 (a), 49 (1), 69, 71 (b), 73, 81, 89, 123, Sch., cl. 13—"Betterment"—"Affected"—Lands Clauses Consolidation Act, 1845 (8 & 9 Vict.,*

RECOUPMENT—*concld.*

c. 18), ss. 63, 68,—Land Acquisition Act (I of 1894), ss. 6, 9, 23 (1) (4) 24 (6), 48—House and Town Planning Act, 1909 (9 Edw. VII, c. 44), s. 58 (3)—Calcutta Municipal Act (Beng. III of 1899), s. 357 (2),—Bombay City Improvement Act (Bom. IV of 1898), ss. 25, 29—Reference to Full Bench, when incompetent. Per CURIAM (CHATTERJEA, *J.* dissenting). The Calcutta Improvement Act does authorize the Board of Trustees to acquire land compulsorily for purposes of "recoupment," *i.e.*, by selling or otherwise dealing with the land under s. 81 or by abandoning the land in consideration of the payment of sum under s. 78. *Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh, I. L. R. 44 Calc. 219,* overruled in so far as it decides to the contrary. *Per* CHATTERJEA *J.* The Act does not authorize compulsory acquisition of land for the purpose of recoupment. The lands are not to be included in the scheme originally for the purpose of thereafter making profits, but if they are properly included in the scheme and subsequently found not to be required, the Board have the power to dispose of such lands. The question referred to the Full Bench did arise (CHATTERJEA, *J. contra*). *Prosonno Coomar Paul Chowdhry* v. *Koylash Chunder Paul Chowdhry, B. L. R. (F. B.) 759,* distinguished. The preamble does not control the enacting provisions of the Act. In s. 42 (*a*) of Beng. Act V of 1911 "affected" means affected in any way, and not merely "injuriously affected." *The Metropolitan Board of Works* v. *Owen McCarthy, L. R. 7 H. L. 243,* explained. The words "by the execution of the scheme" used in s. 42 (*a*) simply mean through or owing to the execution of the scheme. *Hammersmith and City Railway Co.* v. *Brand, L. R. 4 H. L. 171,* distinguished. S. 78 does not apply only "to land which was originally required for the execution of the scheme but was subsequently found to be unnecessary." *Per* TEUNON *J.* The area fixed and sanctioned as "the area comprised in the scheme" corresponds with the "lands delineated on the plans" in England. MANI LALL SINGH *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA (1917) . . . . **I. L. R. 45 Calc. 343**

RECOVERY OF RENTS ACT (BENG. X OF 1859).

——— **s. 10—**

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

REDEMPTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47.
I. L. R. 42 Bom. 246

See MORTGAGE . **I. L. R. 41 Mad. 435**

——— **suit for—**

See REGULATION (XVII OF 1806), S. 8.
I. L. R. 40 All. 387

REFERENCE TO FULL BENCH.

See RECOUPMENT.
I. L. R. 45 Calc. 343

REFUND.

See CITY OF BOMBAY IMPROVEMENT TRUST ACT (BOM. IV OF 1898), S. 48 (*11*) . **I. L. R. 42 Bom. 54**

REGISTRATION.

See CANCELLATION OF REGISTRATION.
I. L. R. 45 Calc. 634

REGISTRATION—*concld.*

See DESIGN . **I. L. R. 45 Calc. 606**

See REGISTRATION ACT (XVI OF 1908).

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 54, 118.
I. L. R. 40 All. 187

REGISTRATION ACT (XVI OF 1908).

——— **s. 17**—*Registration—Agreement by reversioners to forego right to sue for declaration respecting an alienation made by the Hindu widow. Held,* that an agreement by which the reversioners to certain property in the possession of a Hindu widow agreed not to enforce their right to sue for a declaration that a gift of such property made by the widow was not binding upon them was not a document which was compulsorily registrable under s. 17 of the Indian Registration Act, 1908. BHANA *v.* GUMAN SINGH (1918).
I. L. R. 40 All. 384

——— **ss. 32, 33, 71; 73, 75, 87, 88**—*Mortgage-deed—Registration—Presentation—Authority to present document for registration on behalf of executant—Distinction between presentation under part VI and under part XII of the Act.* A mortgage-deed was executed on the 20th of November 1911. Before, however, the deed could be registered, the mortgagee fell ill. On the 3rd of February, 1912, the mortgagee executed in favour of a pleader, a power-of-attorney of the kind referred to in s. 32 of the Indian Registration Act, 1908. This was duly authenticated by the sub-registrar, and the document was presented for registration by the appointee on the 5th of February, 1912. On the 8th of February the mortgagee died. The mortgagor failed to appear before the sub-registrar and admit execution, and the sub-registrar refused to register the deed. An application was next presented to the Registrar under s. 73 of the Act by the widow of the mortgagee in the capacity of the guardian of the mortgagee's two minor sons, and on the 28th of June, 1912, the Registrar made an order under s. 75 (*1*) of the Act directing that the mortgage-deed should be registered. Meanwhile the estate of the minors had been taken under the superintendence of the Court of Wards, and the Collector, as Manager on behalf the Court of Wards, on the 23rd of July, 1912, sent the mortgage-deed by a messenger to the sub-registrar, with a copy of the Registrar's order mentioned above and an official letter requesting that the document might be registered, which was accordingly done. On suit having been brought on the mortgage, some of the defendants raised an objection that the mortgage-deed in suit was not validly registered. *Held,* that the document was properly registered No valid objection could be sustained as to its presentation, either on the 5th of February, 1912, when it was presented by the pleader acting under his power-of-attorney given by the mortgagee, or on the 23rd of July, 1912, when it was sent by the Collector to the sub-registrar. The Collector was not bound to present the document in person, and that being so, it was immaterial what means he took to bring it before the sub-registrar. That officer was perfectly justified in presuming the authenticity of the Collector's official letter and in taking action accordingly. COLLECTOR OF MORADABAD *v.* MAQBUL-UL-RAHMAN (1918).
I. L. R. 40 All. 434

REGISTRATION ACT (XVI OF 1908)—*concld.*

——— s. 47—*Time from which registered document operates—Date of execution and not date of registration.* The plaintiff purchased a certain property. The vendor on receipt of consideration executed a deed of sale in his favour but thereafter he executed a second conveyance in respect of the same property in favour of a third person who had no notice of the plaintiff's purchase and had the latter document registered first and put the second purchaser in possession. RAJANI NATH DAS *v.* OFAJUDDI MOLLA (1916) . **22 C. W. N. 318**

——— s. 77—

See EVIDENCE ACT (I OF 1872), ss. 33, 165 . . **I. L. R. 41 Mad. 731**

——— s. 90—

See RAJINAMA AND KABULIYAT.
I. L. R. 42 Ecm. 259

REGULATION VIII OF 1793.

——— ss. 52, 54—

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

REGULATION XIX OF 1793.

——— ss. 22 to 25—

See LAKHERAJ LANDS.
I. L. R. 45 Calc. 574

REGULATION XXV OF 1802.

See UNSETTLED PALAYAM.
I. L. R. 41 Mad. 749

REGULATION XVII OF 1806.

——— s. 8—*Mortgage by way of conditional sale—Suit for redemption—Plea of foreclosure under the Regulation—Procedure—Evidence.* In the case of mortgage to which Regulation XVII of 1806 applies, before it can be held that the right of redemption is barred, it must be proved that the requirements of the Regulation have been strictly complied with, that is to say that the mortgagee had served upon the mortgagor a notice, under the seal and official signature of the District Judge, warning him that the mortgage would be finally foreclosed in the event of his failure to redeem within the period of one year. *Badal Ram* v. *Taj Ali, 4 A. L. J. 717,* followed. RAM BARAN RAI *v.* HAR SEWAK DUBE (1918).
I. L. R. 40 All. 387

REGULATION V OF 1812.

——— s. 3—

See ILLEGAL CESS.
I. L. R. 45 Calc. 259

REGULATION XI OF 1825.

——— *Damodar, if a navigable river—Non-navigable river flowing through or by the side of permanently-settled estates, churs forming in, if resumable and assessable with revenue—Riparian owner's right to the middle of the stream—Exclusive right of fishery as evidence of title in the soil of the river-bed.* The test in this country as to whether a river is navigable is whether it allows of the passage of boats at all times of the year. The river Damodar was not a navigable river at the date of the Permanent Settlement. At the date of the Permanent Settlement, the bed of the river Damodar in so far as it flowed through the chakla

REGULATION XI OF 1825—*concld.*

or zemindary of Burdwan formed a portion of the estate permanently settled with the predecessor of the zemindar of Burdwan. Although an exclusive right of fishery does not of itself pass the right to the soil in the bed of the river, the terms of the grant in this case being unknown or uncertain, the fact that the grantee had a several right of fishery in the river was held to support his claim to the soil in its bed. Churs forming in non-navigable rivers flowing through permanently-settled estates and forming parts thereof are not resumable under Reg. XI of 1825. Before there can be a further assessment of Government revenue there must be a "gain" from the public domain. The right to the soil of a river flowing within the estates of different proprietors belongs to the riparian owners *ad medium filum aquæ.* Where property is bounded by a road or a river, the boundary even if given as the road or the river is the middle of the road or river as the case may be. Therefore, a permanently-settled estate on the bank of a non-navigable river included half the bed of the river, and churs forming on this portion are not assessable with revenue under Reg. XI of 1825, the assessment of the Government revenue on the riparian mouzas having been imposed not only on the mouzas but on the adjoining half of the river bed also. SECRETARY OF STATE FOR INDIA *v.* BEJOY CHAND MAHATAP (1918).
22 C. W. N. 872

REGULATION X OF 1831.

See MADRAS REVENUE RECOVERY ACT. MADRAS SALE OF MINORS' ESTATES REGULATION . **I. L. R. 41 Mad. 733**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—

——— s. 14—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 42 Bom. 742**

——— *Procedure to be followed by committee in the transaction of its business—Suspension of a temple trustee by a temple committee—Legality of procedure—Suit by the trustee for damages for illegal suspension—Liability of individual members of the committee in damages.* Notice of suspension was given to a temple trustee in accordance with the opinion of the majority of the members of the local temple committee, to each of whom one of the members sent a copy of his report recommending suspension, and in spite of the objection taken by one member that the matter should be disposed of at a meeting. *Held,* that a temple committee under the Religious Endowments Act resembles a corporation and that the ordinary way to transact its business is at a meeting. Assuming that it can do some of its business in circulation, it cannot remove or suspend trustee in this manner. *Rex* v. *Taylor, 3 Salk 231; 91 E. R. 795, Rex* v. *Sutton, 10 Mod. 74; 88 E. R. 632, Thandavaraya Pillai* v. *Subbayyar, I. L. R. 23 Mad. 483, 485,* and *Ponnambala Pillai* v. *Muthu Chettiar, 30 Mad. L. J. 619,* referred to. The procedure being *ultra vires* it is no answer to the trustee's suit for damages for illegal suspension that there were sufficient grounds for suspension. In India individual members of a temple committee, who are parties to an illegal suspension of this kind are liable in damages. *Vijaya Raghava* v. *Secretary of State for India, I. L. R. 7 Mad. 466,* and *Ferguson* v. *Kinnoull, 9 Cl. & F. 251,* followed. Indian and English

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*concld.*

——— **s. 14**—*concld.*

decisions considered. VENKATA NARAYANA PILLAI *v.* PONNUSAWMI NADAR (1917).
I. L. R. 41 Mad. 357

——— **ss. 14, 18**—*Leave given to four persons under s. 18 of the Act—Suit by them under s. 14—Death of one of the plaintiffs after suit, whether it effects abatement.* A suit instituted under s. 14 of the Religious Endowments Act by four persons with the leave of the Court under s. 18 of the Act, does not abate on the death of one of the plaintiffs, *Venkatesha Malia* v. *Ramayya Hegade, I. L. R. 38 Mad. 1192, Maddala Bagavannarayana* v. *Vadapalli Perumalla Charyulu, 29 Mad. L. J. 231,* distinguished. *Chabile Ram* v. *Durga Prasad, I. L. R. 37 All. 296,* not approved. *Parameswaran Munpee* v. *Narayanan Nambodri, I. L. R. 40 Mad. 110,* referred to. ALAGAPPA *v.* MUTHIAH (1917).
I. L. R. 41 Mad. 237

RELIGIOUS OFFICE.

——— **competency of woman to hold—**

See HINDU LAW—RELIGIOUS OFFICE.
I. L. R. 41 Mad. 886

See MAHOMEDAN LAW—RELIGIOUS OFFICE . **I. L. R. 41 Mad. 1033**

REMAND.

See AGRA TENANCY ACT (II OF 1901), S. 193 . . **I. L. R. 40 All. 652**

RENT.

See ESTATES LAND ACT (I OF 1908), S. 26.
I. L. R. 41 Mad. 121

See LANDLORD AND TENANT—RENT.

——— **enhancement of—**

See OUDH RENT ACT (XXII OF 1886), S. 3(*10*) and CH. VIIA.
I. L. R. 40 All. 541

——— **remission of—**

See CUSTOM . **I. L. R. 45 Calc. 475**

——— **suit for, by a third party—**

See CONTRACT . **I. L. R. 41 Mad. 488**

——— *Commutation—Bengal Tenancy Act (VIII of 1885), s. 40, sub-ss. (1), (2), (3), s. 109. Order for commutation of rent— Jurisdiction.* Where under s. 40 of the Bengal Tenancy Act, an application by a tenant for commutation of rent was made to a Sub-divisional Officer, who transferred the same to a Settlement Officer, who in his turn transferred it to an Assistant Settlement Officer who heard and decided the application on its merits: *Held,* that it was not competent for the Sub-divisional Officer to transfer the application to the Settlement Officer. *Held,* further, that it was incumbent on the Court to satisfy itself that an order made on an application under s. 40 of the Bengal Tenancy Act was made with jurisdiction, though it was not competent to examine the propriety of an order so made. *Lalla Saligram Singh* v. *Mohunt Ramgir, 3 C. W. N. 311, Kali Krishna Biswas* v. *Ram Chandra Baidya, 21 C. L. J. 487; 19 C. W. N. 823,* followed. JADU NATH MANNA *v.* PRANKRISHNA DAS (1917).
I. L. R. 45 Calc. 769

RENT SUIT.

——— *Against co-tenants—Non-substitution of heirs of deceased co-tenant—*

RENT SUIT—*concld.*

Decree whether good money decree against survivors—Liability, if joint or joint and several—Right of co-tenant to insist on all co-tenants being impleaded—Contract Act (IX of 1872), s. 43. Where in a suit for rent the landlord purported to make all the persons who had entered into the contract of tenancy parties defendants and obtained an *ex parte* decree, but some of the tenants having died before the suit, those surviving opposed execution on the ground that the decree was not validly obtained: *Held,* that the decree passed in such circumstances was a good and valid money decree enforcible against the tenants who were alive at the date of the decree or their representative. If the landlord desires to obtain a decree good against the land, under the Bengal Tenancy Act, he must ordinarily (apart from any question of representation) implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. But for the purposes of a money decree (in the absence of express agreement to the contrary) he is free, under s. 43 of the Contract Act, to sue any or all of the tenants. *Per* N. R. CHATTERJEA, *J.* (RICHARDSON, *J., reserving his opinion*) when the contract is with a single person as tenant and he dies, the liability of his heirs is a joint liability. *Per* RICHARDSON, *J.* Liability is joint, if on the death of one of the joint promisors the liability becomes the liability of the surviving promisors and no liability devolves upon the heirs or legal representatives of the deceased promisor. There being no survivorship amongst co-tenants in India and co-tenants not having under s. 43 the right to be sued together, *primâ facie* the liability is joint and several. Authorities reviewed. KRISHNA DAS ROY *v.* KALI TARA CHOWDHURANI (1917).
22 C. W. N. 289

REQUIREMENTS.

See MORTGAGE . **I. L. R. 45 Calc. 748**

REPRESENTATIVE SUIT.

See CONTRACT ACT (IX OF 1872), S. 70.
I. L. R. 42 Bom. 556

REPUDIATION OF TITLE.

See LEASE . **I. L. R. 42 Bom. 734**

RES JUDICATA.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47.
I. L. R. 42 Bom. 246

See CIVIL PROCEDURE CODE (1908), S. 11 EXPLN. V . . **I. L. R. 40 All. 58**

See CIVIL PROCEDURE CODE (1908), S. 11, EXPLN. V; O. XX, R. 12.
I. L. R. 40 All. 292

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1.
I. L. R. 42 Bom. 155

See HINDU LAW—ADOPTION.
I. L. R. 40 All. 593

See HINDU LAW—JOINT FAMILY.
I. L. R. 42 Bom. 69

1. ——— *British Baluchistan Regulation (IX of 1896), s. 10—Issue not "finally decided" in former suit—Civil Procedure Code, 1882, s. 13—Defence of fraudulent representation in suit on a bond.* S. 10 of the British Baluchistan Regulation IX of 1896 creates an estoppel by judgment only when the "matter in issue" has

RES JUDICATA—*contd.*

been "finally decided." *Sheosagar Singh* v. *Sitaram Singh, I. L. R. 24 Calc. 616; L. R. 24 I. A. 50,* followed. That was a case under s. 13 of the Civil Procedure Code, 1882, which, so far as the question under discussion is concerned, is similar to s. 10 of the Baluchistan Regulation. The appellant (defendant) had brought a suit for cancellation of a bond on the ground that he was induced to execute it by the fraudulent representations of the respondent (the present plaintiff). The first Court held that he had failed to establish the fraud, and that decision was affirmed on appeal by the District Judge. He then brought a second appeal to the Judicial Commissioner who declined to go into the merits of the case and, upholding an objection by the respondent to the frame of the suit, dismissed the appeal. In a suit brought by the respondent to enforce the bond, the appellant raised the same issue as before, and the two lower Courts held that the issue was *res judicata,* and the Judicial Commissioner dismissed an appeal to him from that decision. *Held* by the Judicial Committee, that the defence in the present suit was not *res judicata,* the allegation regarding the execution of the bond on the fraudulent representations of the respondent never having been "finally decided" in the Judicial Commissioner's Court. ABDULLAH ASHGAR ALI KHAN *v.* GANESH DASS (1917).

I. L. R. 45 Calc. 442

2. ——— *Civil Procedure Code (Act V of 1908), s. 11, expl. V, s. 47 and O. XX, r. 12—Previous suit for land and past and future profits—Decree for land and past profits and no decision as to future profits—Second suit for future profits, maintainability of. Held* by the Full Bench (AYLING, *J., contra*). When in a suit for possession and past and future mesne profits the Court gives a decree for mesne profits down to the date of suit, and says nothing about subsequent mesne profits, a fresh suit to recover them is not barred under s. 11, Civil Procedure Code. *Ramaswami Iyer* v. *Sri Rangaraja Iyangar, 2 L. W. 8,* overruled. *Kuppuswamy Aiyar* v. *Venkataramier, 15 Mad. L. J. 462,* applied. DORAISAMI *v.* SUBRAMANIA (1917) . . . **I. L. R. 41 Mad. 188**

3. ——— *Property belonging to estate B erroneously decreed to be in estate A—Tenants under B under permanent leases, if bound by decree—Tenants entitled to hold under their own leases under A—Co-sharer zemindar purchasing tenure—Possession disputed by tenant of neighbouring zemindar—Suit as both purchaser and zemindar to establish title in property purchased—Zemindar's title if properly in issue—Litigating under the same title.* A and B are neighbouring zemindaries. The 4-5ths proprietor of A purchased in execution of a decree for his share of the rent a defaulting tenure G in A. A tenant of B having set up title as such to a portion of the land thus purchased, the purchaser sued the claimant and the zemindars of B to establish his title both as landlord and as purchaser to the tenure G. In the course of that suit a Commissioner fixed a boundary between A and B, which in a subsequent investigation was found to have erroneously included in estate A lands which really formed part of estate B, as part of the defaulting tenure G and this was confirmed by the Court. *Held,* that the plaintiff in that suit was interested in establishing his title both as zemindar and purchaser, and the zemindari title having, upon the pleadings, been directly put in issue, the

RES JUDICATA—*concld.*

decision, so far as plaintiff's 4-5ths zemindari title was concerned, was as between the rival zemindars *res judicata.* The defaulting tenure-holder having prior to the sale of the tenure mortgaged his properties, the tenure (amongst other properties) was sold in execution of a decree obtained on the mortgage and a part of it was purchased by the mortgagee and the rest by a stranger who later on sold it to the mortgagee. The mortgagee purchaser was no party to the suit of the 4-5ths zemindar of A who had purchased only the equity of redemption at the sale in execution of his rent decree. *Held,* that the decision in that suit was not *res judicata* against the mortgagee purchaser who was entitled to show that he held certain portions of the land purchased by him under permanent leases granted to the mortgagor by the proprietors of B on certain terms. That as regards such lands the 4-5ths zemindari title being found to be in the proprietors A *res judicata* in the present suit in which both the proprietors of B and the mortgagee purchaser are parties, the mortgagee purchaser is entitled to hold them under the 4-5ths proprietor of A as to that share on the terms of the permanent leases granted by the proprietors of B. SHIB CHANDRA RAY *v.* HARENDRO LAL RAY (1918).

22 C. W. N. 721

RESIDUARY LEGATEE.

——— **death of—**

See PARTIES . **I. L. R. 45 Calc. 862**

RESTITUTION OF CONJUGAL RIGHTS.

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.

I. L. R. 40 All. 332

RESUMPTION.

See CHAUKIDARI CHAKARAN LANDS

I. L. R. 45 Calc. 685

RESUMPTION BY GOVERNMENT.

See CHAUKIDARI CHAKARAN LANDS.

I. L. R. 45 Calc. 765

RESUMPTION OF LAND.

——— *Land held under Sanad from Government—Valuation of land to be determined by a committee appointed by Government—Construction of the word "committee"—Valuation fixed by the majority binding on parties to the Sanad—Distinction between arbitrators and valuers.* Land was held by the plaintiffs under a Sanad from Government which provided "the said ground to be at any time resumable by Government for public purposes, six months' notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner, the amount of which a committee appointed by Government is in such a case to determine." The land being resumed with due notice given under the above clause the Government appointed a committee of three persons to value the compensation to be paid to the plaintiffs. Two members of the committee valued the land at Rs. 90,383, the third valuing it at Rs. 1,79,774. The Government accepted the report of the majority as the determination by the committee under the terms of the Sanad and took possession of the land after payment of Rs. 90,383 to the plaintiffs. The plaintiffs filed the present suit to recover compensation at the higher valuation, or any sum in excess of Rs. 90,383 which the Court might think just and proper: *Held,*

RESUMPTION OF LAND—*concld.*

dismissing the suit (*i*) that it was the understanding and within the contemplation of all the parties to the Sanad that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of the committee; (*ii*) that the valuation agreed upon by the majority of the committee appointed by Government was the valuation expressed to be determined and so made binding upon the parties to the resumption term in the Sanad. MAHOMEDALY ADAMJI *v* SECRETARY OF STATE FOR INDIA (1917).

I. L. R. 42 Bom. 668

REVENUE COURT.

———— jurisdiction of—

See ESTATES LAND ACT (MAD. I OF 1908), s. 26 . . **I. L. R. 41 Mad. 121**

REVENUE-PAYING ESTATE.

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 45 Calc. 765

REVENUE RECOVERY ACT (MAD. II OF 1864).

———— ss. 37 (A), 38 and 59—*Sale for arrears of revenue—Applications under ss. 37 (A) and 38—Dismissal by Deputy Collector and Collector—Confirmation of sale, whether final—Application to Board of Revenue—Powers of general supervision of Board of Revenue—Power to direct Collector to cancel sale—Cancellation by Collector—Validity of—Title of purchaser, whether affected—Suit by purchaser for possession—Limitation—Material irregularity—Proof of substantial loss—Madras Regulations I, II of 1803 and VII of 1828.* The plaintiff purchased the suit lands in a revenue auction sale held under the Madras Revenue Recovery Act (II of 1864). A petition to set aside the sale under s. 37 (A) of the Act was filed by the defaulter before the Deputy Collector and was dismissed; another petition under s. 38 (*1*) of the Act was also dismissed by the Deputy Collector who confirmed the sale; the District Collector also confirmed the sale; the first defendant then filed a petition before the Board of Revenue to set aside the sale. The Board of Revenue, in the exercise of their powers of general supervision, directed the Collector to cancel the sale which was accordingly cancelled by him. The plaintiff thereupon instituted this suit to recover possession of the suit lands more than six months after the order cancelling the sale. The first defendant pleaded that the sale was validly cancelled by the Collector, that the suit was barred by limitation under s. 59 of Act II of 1864, and that the sale should have been set aside on account of material irregularity. *Held*, that when a Collector is empowered by a statute to pass a certain order, it is not open to the Board of Revenue having only general powers of supervision over him to direct him to pass a special order contrary to that he had already passed; that the order cancelling the sale, though purporting to be passed by the Collector, was really the order of the Board of Revenue who had no power under Act II of 1864 to pass such an order; that after an order under s. 38 (*3*) was passed by the Deputy Collector and confirmed by the Collector, it became final under that section, and neither of them had power under the Act to pass any further order; that the suit was not barred by limitation as s. 59 of Act II of 1864 was not applicable for the reason that the order complained of was passed wholly without jurisdiction and not under any power conferred by the Act; and that, on the merits, the sale should not have been set aside, as no substantial loss was proved to be due to the irregularity. SUNDARAM AYYANGAR *v.* RAMASWAMI AYYANGAR (1918).

I. L. R. 41 Mad. 955

REVENUE RECOVERY ACT (MAD. II OF 1864)—*concld.*

———— ss. 37 (A), 38 and 59—*concld.*

REVENUE SALE.

———— *Notification—"Official Gazette"—Calcutta Gazette—Government Vernacular Gazette—Bengal Land Revenue Sales Act (XI of 1859), ss. 6, 33.* The "Official Gazette" in which by s. 6 of Act XI of 1859 a notification is to be published of the revenue sales therein referred to, is the *Calcutta Gazette*. A sale is not "contrary to the provisions of this Act" within s. 33 by reason of no notification having been published in a Government Vernacular Gazette circulating in the locality. SHARFUDDIN HOSSAIN *v.* RADHA CHARAN DAS (1918) . . **L. R. 45 I. A. 205**

REVENUE SALE LAW (ACT XI OF 1859).

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 45 Calc. 765

———— ss. 31, 53—*Estate left in arrear and purchased by proprietor benami at revenue sale—Encumbrancers, if can demand satisfaction from both surplus sale-proceeds and the mortgage property—Court's power on appeal to grant relief in favour of party who did not appeal—Civil Procedure Code (Act V of 1908), ss. 107, 151 and O. XLI, r. 33—Estoppel by conduct in suit—Fraud, punishment of.* During the pendency of a suit by *B* to enforce a mortgage upon a revenue-paying estate, the mortgagor deliberately let the property fall into arrear, which being sold under Act XI of 1859 was purchased by the mortgagor in the *benami* of another. A suit was then brought by *K* to enforce a prior mortgage over the property, in which (not being presumably aware of the real character of the sale) he claimed a decree for payment of his dues out of the surplus sale-proceeds. Before this suit was decreed, *B* (whom *K* had joined as a party in his suit) brought a suit in which he alleged the purchase at the sale for arrears of revenue to have been *benami* by the proprietor and claimed a decree either for setting aside the sale or for a declaration that his mortgage should remain valid and operative against the estate. In view of this suit, the Court, whilst decreeing *K's* suit as prayed, further ordered that in the event of the sale being set aside, the mortgage monies, interest and costs due to *K* should be realised by the sale of the mortgaged property. *B* appealed against this decree and this appeal was heard in the High Court along with appeals against *B* preferred from decrees obtained by him in his suits, by one of which his allegations as to the real character of the purchase at the revenue sale had been found proved, whilst the other had given him the usual mortgage decree. All three appeals were dismissed, but at the instance of the mortgagor, the High Court varied the decree in *K's* suit by setting aside the direction that his mortgage monies should be paid out of the surplus monies of the revenue sale. Upon further appeals to the Privy Council, the mortgagor urged *inter alia*, that *B* was estopped by his conduct as defendant in *K's*

REVENUE SALE LAW (ACT XI OF 1859)—*concld.*

——— **ss. 31, 53**—*concld.*

suit from questioning the sale under Act XI of 1859, and *B* urged that *K* not having appealed to the High Court, the decree of the lower Court could not be varied in the manner stated; and also that *K* was, in spite of what was found as to the real character of the sale, entitled to be satisfied out of the proceeds of the sale, so that in case *K* was entirely paid off out of the sale-proceeds, *B* would have a more abundant security in the mortgaged property to satisfy his decree. *Held*, that s. 53 of Act XI of 1859 distinctly contemplates purchase of property by a recorded proprietor, and the only effect of the finding that the purchase was *benami* by the proprietor was that, so far as the encumbrances were concerned, the sale was of no effect, and that, therefore, the direction of the High Court in *K's* suit was in accordance with the law. That the High Court had abundant power to give that direction, notwithstanding that *K* did not appeal, under ss. 107 and 151 of the Civil Procedure Code and O. XLI, r. 33 thereof, the Court having had authority under the first-mentioned provision, if necessary, to take additional evidence. That *B* who had no power of controlling the form of *K's* suit and did not appear to have taken any step therein irrevocably asserting his intention to rely on the sale and not impeached the whole proceedings, was not estopped from claiming the reliefs which he prayed for in his suit to set aside the sale. That if the sale had in fact been to a stranger, the encumbrances would have been transferred to the sale-proceeds, since the purchaser would obtain a title free from encumbrances. It is not right to punish a man for fraudulent behaviour by making him suffer other penalties than those which are the direct consequence of his fraud. TARINI CHARAN SAKKAR *v* BISHUN CHAND (1917).

22 C. W. N. 505

——— **s. 58**—*Collector's peon starting the bidding according to custom by bidding one rupee—Subsequent bids falling short of arrears—Collector, if may legally buy property for the highest bid—Irregularity or illegality—Ss. 6 and 7—Notices signed by Sub-Deputy Collector, if vitiates sale.* Where a revenue-paying estate in arrears having been put up for sale, the peon, a Government official, started the bidding according to custom as a matter of form by bidding Re. 1, and, thereafter, other people having bid for the property, the highest bid came up to Rs. 58, which being less than the amount in arrears, the Collector purporting to act under s. 58 of Act XI of 1859 purchased the property for the highest amount bid: *Held* (by the majority), that this was a different case from *Halimannessa Chowdhurani* v. *The Secretary of State for India, I. L. R. 31 Calc. 1036; 8 C. W. N. 880*, and the purchase by the Collector was not in contravention of the letter or the spirit of s. 58 of the Revenue Sales Act. The fact that the notices under ss. 6 and 7 of the Act were signed not by the Collector or other officer authorised to hold sales but by a Sub-Deputy Collector on behalf of the Collector did not vitiate the sale. AMRITA LAL ROY *v.* SECRETARY OF STATE FOR INDIA (1918).

22 C. W. N. 769

REVERSIONARY HEIR.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 141, 144.

I. L. R. 42 Bom. 714

REVERSIONARY TRUST.

See WILL . . **L. R. 45 I. A. 257**

REVERSIONER.

See DECLARATORY DECREE.

I. L. R. 45 Calc. 510

See HINDU LAW—JOINT FAMILY.

I. L. R. 42 Bom. 69

See HINDU LAW—REVERSIONER.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 125 . **I. L. R. 41 Mad. 659**

——— **relinquishment of right of suit by—**

See REGISTRATION ACT (XVI OF 1908), S. 17 . . **I. L. R. 40 All. 584**

REVERSIONER'S CONSENT.

See HINDU WIDOW.

I. L. R. 42 Bom. 719

REVIEW.

See LIMITATION ACT (IX OF 1908), SS. 5, 14 . . **I. L. R. 42 Bom. 295**

See POSSESSORY SUIT.

I. L. R. 45 Calc. 519

——— *Procedure and Practice—Discovery of new and important matter of evidence—Character of evidence—Trial of issue—Appeal against order granting review—Civil Procedure Code (Act V of 1908), O. XLIII, r. 1 (w); O. XLVII, rr. 1, 4, 7, 8.* The plaintiff obtained a decree in a suit instituted against the defendant. Subsequently the defendant applied for a review of the decree on the ground of the discovery of new and important matter of evidence which was not within his knowledge and could not be produced by him at the trial, and obtained a Rule calling upon the plaintiff to show cause why the said decree should not be reviewed and why this suit should not be set down on the peremptory list of suits for hearing. Upon the Rule coming on for hearing, the Court directed an issue to be tried as to the new and important matter discovered after the judgment in this case. This issue having come on for trial, the Court decided the issue in favour of the defendant and the Rule was made absolute. *Held*, that this application for review was not granted in contravention to r. 4 of O. XLVII of the Civil Procedure Code, and it was not possible for the Court on this appeal to say that the learned Judge ought not to have made an order for review. *Held*, also, that the additional evidence was of such an unsatisfactory nature and it came into existence in such an unsatisfactory way and the learned Judge was apparently in such doubt as to whether it should be accepted, that it ought not to be taken as sufficient to overrule the distinct and clear opinion which he had formed. *Per* SANDERSON, *C.J.* It is most important that there should be some finality in the trial of cases, and the greatest care ought to be exercised in granting a review, when that review is asked for upon the allegation that fresh evidence has been discovered since the judgment was given. In an ordinary case where the appeal is on a question of fact, where the learned Judge of the Court of first instance has heard and seen the witnesses and has come to a conclusion upon the question of fact upon the evidence on the one side and on the other, there is a very great onus upon the shoulders of the appellant when he comes to this Court and asks it to overrule the decision of the learned

REVIEW—*concld.*

Judge upon the question of fact. *Per* MOOKERJEE *J.* Under O. XLVII, r. 7, an order granting an application for review may be attacked by way of appeal on the ground that the application has been granted on the ground of discovery of new evidence without strict proof of the applicant that such new evidence was not within his knowledge or could not be adduced by him when the decree was passed. NANDALAL MULLICK *v.* PANCHANAN MUKERJEE (1917) . . . . **I. L. R. 45 Calc. 60**

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE (1908), O. XLVII, r. 7 . **I. L. R. 40 All. 68**

REVISION.

See CIVIL PROCEDURE CODE (1908), s. 115. **I. L. R. 40 All. 674**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 95 . **I. L. R. 40 All. 216**

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1; S. 115. **I. L. R. 40 All. 612**

See CIVIL PROCEDURE CODE (1908), O. XLIV, R. 1 . **I. L. R. 40 All. 381**

See CRIMINAL PROCEDURE CODE, SS. 107, 125, 438 . . **I. L. R. 40 All. 140**

See CRIMINAL PROCEDURE CODE, S. 145. **I. L. R. 40 All. 364**

See CRIMINAL PROCEDURE CODE, SS. 439, 476 . . . **I. L. R. 40 All. 144**

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 36 **I. L. R. 40 All. 153**

See LIMITATION . **I. L. R. 45 Calc. 94**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 31. **I. L. R. 40 All. 666**

——————— *Civil Procedure Code (Act V of 1908), s. 115—Government of India Act of 1915, s. 107—Difference of opinion in a Divisional Bench in disposing of a Rule—Appeal under s. 15, Letters Patent, if lies.* Judgment-debtor whose two-thirds share of a *putni* was sold in execution of his landlord's decree for rent and purchased by the owner of the remaining one-third of the *putni* applied to have the sale set aside under O. XXI, r. 90, alleging, *inter alia*, that the value of the property sold was deliberately underestimated and the property sold at an inadequate value. The Munsif upheld both objections to the sale and set it aside, but the District Judge on appeal restored it holding that the value fetched was not seriously inadequate. To this conclusion the District Judge was led by assuming that what was sold was only one-third and not two-thirds of the *putni* and that the purchaser was a stranger. On an application for revision, the Judges of the Division Bench (N. R. CHATTERJEA and MULLICK, *JJ.*) differing in opinion, the order of the seinior Judge setting aside the order of the District Judge and remanding the case prevailed. *Held, per* CURIAM, that a further appeal lay under s. 15 of the Letters Patent. *Held* (by the majority TEUNON, J., *contra*) (affirming MULLICK, *J.*), that this was not a case for interference in revision, for, although the District Judge made a grave mistake of fact, the failure of justice was not due to a fault of procedure such as is contemplated by s. 115, cl. (c), of the Civil Procedure Code, nor was it a

REVISION—*concld.*

case for interference under s. 107 of the Government of India Act, as this mistake could have been corrected by an applicatian for review. *Per* TEUNON, *J.* (agreeing with N. R. CHATTERJEA, *J.*). —The District Judge having in this case set himself to value not the property sold but an entirely different property the error was not one of fact only, and the High Court should interfere. CHANDRA KISHORE ROY CHOUDHURY *v.* BASARAT ALI CHOWDHURY (1917). **22 C. W. N. 627**

REVISION SURVEY.

See LAND REVENUE CODE (BOM. ACT V OF 1879), S. 48. **I. L. R. 42 Bom. 126**

RIGHT OF SUIT.

See PARTIES . **I. L. R. 45 Calc. 862**

RISK NOTE.

——————— **Form "B"—**

See RAILWAYS ACT, 1890, S. 72 (2). **22 C. W. N. 622**

RIVER

——————— **right to bed of—**

See GRANT . **I. L. R. 41 Mad. 840**

S

SALE.

See COURT SALE.

See SALE OF GOODS.

See AGRA TENANCY ACT (II OF 1901), SS. 10, 20. . **I. L. R. 40 All. 446**

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 45 Calc. 765**

See CONTRACT . **I. L. R. 42 Bom. 344**

See CONTRACT ACT (IX OF 1872), S. 70. **I. L. R. 40 All. 555**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 44 . **I. L. R. 42 Bom. 626**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 116 . **I. L. R. 40 All. 605**

See PRIVATE SALE. **I. L. R. 45 Calc. 779**

——————— **by prior mortgagee—**

See MORTGAGE . **I. L. R. 45 Calc. 702**

——————— **suit for, on a mortgage—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, RR. 4, 5 AND 10. **I. L. R. 40 All. 109**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 5 . **I. L. R. 40 All. 20**

1. ——————— *Bengal Tenancy Act (VIII of 1885)—Sale of tenancy—Status of the decree-holder—Effect of the cessation of interest (partial or entire) of the landlord.* Where the decree-holder continued to be the sole landlord at the date of the application for execution of the decree and in his character as landlord decree-holder took the necessary steps for the sale of the under-tenure in conformity with the statutory provisions, the effect of the execution sale is to pass the under-tenure to

SALE—*concld.*

the purchaser, even though the decree-holder has lost his interest as landlord before the actual sale. *Forbes* v. *Maharaj Bahadur Singh, I. L. R. 41 Calc. 926*, distinguished. *Hem Chunder Bhunjo* v. *Mon Mohini Dassi, 3 C. W. N. 604, Chhatrapat Singh* v. *Gopi Chand Bothra, I. L. R. 26 Calc. 750, Srimant Roy* v. *Mahadeo Mahata, I. L. R. 31 Calc. 550, Khetra Pal Singh* v. *Kritarthamoyi Dassi, I. L. R. 33 Calc. 566, Prafulla* v. *Nasibannessa, 24 C. L. J. 331*, referred to. SYEDUNNESA KHATUN *v.* AMIRUDDI (1917).

I. L. R. 45 Calc. 294

2. ——— *Date of sale, whether date of confirmation—Bengal Tenancy Act (VIII of 1885), ss. 167, 169.* The words "date of sale" referred to in s. 167 of the Bengal Tenancy Act mean the date when the sale is confirmed and not the date when the property is actually sold to the purchaser. *Matangini Choudhurani* v. *Sreenath Das, 7 C. W. N. 552*, referred to. *Banko Behary Das* v. *Krishna Chandra Bhowmick, 18 C. W. N. 349; 18 C. L. J. 170*, approved. *Yusuf Gazi* v. *Asmat Mollah, 17 C. W. N. 440*, dissented from. NANDA LAL BANERJEE *v.* UMESH CHANDRA DAS (1917) . **I. L. R. 45 Calc. 151**

SALE-DEED.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 91 . . **I. L. R. 42 Bom. 638**

SALE IN EXECUTION OF DECREE.

See ATTACHMENT BEFORE JUDGMENT.

I. L. R. 45 Calc. 780

SALE OF GOODS.

1. ——— *Vendor and purchaser—C. I. F. contract—Payment to be made after goods had been landed—Breach of contract—Failure of vendors to deliver bill of lading or goods—Contract of affreightment—Property consigned on enemy vessel—War declared whilst cargo at sea—Capture of vessel and cargo—Adjudication by Prize Court—Condemnation of vessel—Release of cargo—Effect of war on executory contract—Impossibility of performance—Void contract—Contract Act (IX of 1872), s. 56.* On the 2nd February 1914, the defendant firm agreed to sell to the plaintiffs 150 tons of basic steel bars under a c. i. f. contract, free Hooghly. The shipments were to be made in June, July and October and delivery to be completed within three days from the date of the landing of the goods. Furthermore, it was agreed between the parties that 45 days' credit from the date of the delivery of the goods should be allowed to the plaintiffs. In respect of the July shipment, the goods which consisted of partly Belgian and partly German manufacture, were shipped on the 2nd July, 1914, from Antwerp per s.s. *Steinturm*, a German steamer. On the 4th August, 1914, when war was declared between England and Germany, the s.s. *Steinturm* was at sea. She was subsequently captured with her cargo by a British cruiser and taken to Colombo for adjudication. The Prize Court condemned the vessel but released the cargo, which was brought to Calcutta at the expense of Government. The Government, thereupon, notified the vendors that the goods had arrived and the latter immediately communicated with the purchasers asking them to take delivery of the goods on payment of certain extra charges to Government. The plaintiffs having refused to do so, the goods were sold by the

SALE OF GOODS—*contd.*

defendants on purchasers' account and risk. In a suit for breach of contract and for damages: *Held*, that the variation of the terms as to the time of payment did not alter the nature of the contract as a c. i. f. contract. *Held*, also, that it was an implied part of the contract of the 2nd February, 1914, that the defendants should procure a contract of affreightment under which the goods would be delivered in the Hooghly. *Held*, also, that the contract between the plaintiffs and the defendants included the performance of an act (*viz.*, the procuring of the contract of affreightment under which the goods would be delivered in the Hooghly) which after the contract was made become impossible by reason of the outbreak of war, within the meaning of s. 56 of the Indian Contract Act and consequently the contract of the 2nd February 1914, was void. MADHORAM HURDEO DAS *v.* G. C. SETT (1917).

I. L. R. 45 Calc. 28

2. ——— *Contract under C. I. F. terms—Policy of insurance omitted from shipping documents—Payment made under mistake—Bank remitting the money to the drawer—Instructions by drawee to withhold payment after remittance—Liability of the Bank as agent—Indian Contract Act (IX of 1872), s. 72—Estoppel—Posting of a demand draft, whether equivalent to payment.* In May 1915, the plaintiff entered into two contracts under c. i. f. terms with one P. Vella for supply to him of certain goods. P. Vella drew a demand draft on the plaintiff and endorsed it over for collection to the Anglo-Egyptian Bank, Ltd., Malta, who in turn endorsed it to the defendant Bank at Aden. On August 10, 1915, the plaintiff was informed by the defendant Bank that the latter held a demand draft upon him and would deliver shipping documents to him on payment of the draft. On August 12, 1915, the plaintiff paid the amount due on the draft and removed from the Bank certain shipping documents among which on inspection at his office the plaintiff failed to discover the policy of insurance. On discovery of this omission, the plaintiff wrote to the defendant Bank on August 13, 1915, stating that the draft had been honoured under a mistake and requested the Bank not to pay the amount of the draft to the drawer of the bill, and in case the remittance had already been made to cable at the plaintiff's expense instructions to withhold payment. The defendants having refused to stop payment of the sum paid by the plaintiff the latter filed a suit claiming refund of the money. The defendant Bank replied that they were acting merely as agents for collection on behalf of the Anglo-Egyptian Bank at Malta through whom the demand draft was received; and that they having given telegraphic intimation of the receipt of money to their principal on the 12th August, that is, before the receipt of the plaintiff's letter of the 13th *idem* were unable to do anything further in the matter. The plaintiff's suit was dismissed by the Judge at Aden. He appealed to the Resident's Court and pending the appeal a reference being made to the High Court, Bombay, under s. 8 of the Aden Act II of 1864, for consideration of questions *inter alia* (i) whether the money was paid by plaintiff to the defendant Bank under a mistake of fact as to the documents delivered in exchange therefor; (ii) whether the defendants could and should have stopped payment of the price as instructed by the plaintiff; (iii) whether

SALE OF GOODS—*concld.*

the defendant Bank acted as principals or agents in collecting the price of goods; (iv) whether if defendants acted as agents in collecting the price of the goods they had any better rights than the sellers P. Vella; (v) whether in the circumstances the plaintiff was entitled to repayment of the price from the defendants under s. 72 of the Indian Contract Act, 1872. *Held*, (1) that the money was paid by the plaintiff to the defendant Bank under a mistake of fact; (2) that although the posting of the draft was neither payment nor an act so prejudicing the defendant Bank that it would be inequitable to require them to refund yet in view of the telegraphic intimation to the defendant's principals at their express request to the effect that money had been paid by the plaintiff, he (the plaintiff) was estopped having regard to the peculiar relation of the parties and, therefore, the defendants could not, nor should they have stopped payment of the price as instructed by the plaintiff; (3) that the defendant Bank were mere agents; (4) that the defendants had higher rights than P. Vella in consequence of estoppel arising from plaintiff's conduct; (5) that the plaintiff would not be entitled to repayment under s. 72 of the Indian Contract Act, 1872, as that section should be read subject to the law of estoppel and in view of the facts in the present case there was a clear case of estoppel. *Deutsche Bank (London Agency)* v. *Beriro & Co. 73 L. T. 669*, referred to. *Shugan Chand* v. *The Govt. N.-W. P. I. L. R. 1 All. 79*, dissented from, SOLOMON JACOB *v.* THE NATIONAL BANK OF INDIA. LTD., ADEN (1917) . **I. L. R. 42 Bom. 16**

SALT WORKS.

See ASSESSMENT **I. L. R. 42 Bom. 692**

SANAD.

See RESUMPTION OF LAND.
I. L. R. 42 Bom. 668

SANCTION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195.
I. L. R. 42 Bom. 281

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE, s. 4.
I. L. R. 40 All. 641

See CRIMINAL PROCEDURE CODE, s. 195.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 197, 210, 215.
I. L. R. 42 Bom. 172

1. ———— "*C o u r t*"—"*Court of Justice*"—*Calcutta Improvement Tribunal, whether a "Court"—Criminal Procedure Code (Act V of 1898), s. 195—Calcutta Improvement Act (Beng. V of 1911), ss. 70, 71 (a), (c) and 77, as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911)—Evidence Act (I of 1872), s. 3.* The word "Court" in s. 195 of the Criminal Procedure Code has a wider meaning than "Court of Justice" under s. 20 of the Penal Code, and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question. *Raghoobuns Sahoy* v. *Kakil Singh, I. L. R. 17 Calc. 872*, and *Chandi Charan Giri* v. *Godadhar Pradhan, 22 C. W. N. 165*, referred to. The Tribunal constituted by the Calcutta Improvement Act (Beng. V of 1911), as amended by the Calcutta Improvement (Appeals) Act (XVIII of 1911), is a "Court," within the meaning of s. 195 of the Criminal Procedure Code. *Hari Pandurang* v. *Secretary of State for India, I. L. R. 27 Bom. 424*, distinguished. NANDA LAL GANGULI *v.* KHETRA MOHAN GHOSE (1918).
I. L. R. 45 Calc. 585

SANCTION FOR PROSECUTION—*concld.*

2. ———— *Sanction by Deputy Collector in appraisement proceedings—No appeal from orders in such proceedings—Jurisdiction—Subordination of such Deputy Collector to the District Judge or Commissioner of the Division—Bengal Tenancy Act (VIII of 1885), ss. 69 and 70—Criminal Procedure Code (Act V of 1898), s. 195 (6), (7) (b) (c).* A Collector, or a Deputy Collector exercising the powers of a Collector, under ss. 69 and 70 of the Bengal Tenancy Act (VIII of 1885), is a "Court" within s. 195 of the Criminal Procedure Code. *Raghoobuns Sahoy* v. *Kokil Singh, I. L. R. 17 Calc. 872*, followed. *Abdullah Khan* v. *Emperor, I. L. R. 37 Calc. 52*, referred to. Proceedings under s. 69 of the Bengal Tenancy Act are civil in nature, and the Court of the Deputy Collector acting thereunder is subordinate to that of the District Judge under s. 195 (7). *Per* CHITTY *J.* S. 195 (7) (c) is intended to apply only where no appeal lies from any decision of a particular Court, and not where a particular order is non-appealable. Appeals from the Collector under the Bengal Tenancy Act, do not *ordinarily* lie to the Commissioner of the Division. In some cases they lie to him, and in others to the Civil Court. The Collector, in proceedings under ss. 69 and 70 of the Act by reason of s. 195 (7) (b) of the Criminal Procedure Code, is subordinate to the Court of the District Judge. *Per* RICHARDSON, *J.* Cl. (c) includes both a particular case or class of cases in which no appeal lies, and a Court from which no appeal lies in any case. *Nibaran Chandra Chakrabarty* v. *Akshoy Kumar Banerjee, 21 C. W. N. 948*, referred to. *Per* CHITTY *J.* The words "Principal Court of Original Jurisdiction" do not refer to a Court of any particular class, but to a Civil Criminal or Revenue Court according to the nature of the case in which the question of sanction arises. *Ajudhia Prasad* v. *Ram Lall, I. L. R. 34 All. 197*, referred to by RICHARDSON, *J.* CHANDI CHARAN GIRI *v.* GADADHAR PRADHAN (1917).
I. L. R. 45 Calc. 336

SANCTION OF GOVERNMENT.

See LOTTERY . **I. L. R. 42 Bom. 676**

SARBARAKARS.

———— **in Khurdah—**

See LAND TENURE **L. R. 45 I. A. 246**

SEARCH-WARRANT.

———— **issue of—**

See CRIMINAL PROCEDURE CODE, SS. 96, 98 . . . **22 C. W. N. 719**

———— *Search-warrant for production of a person confined—Form of warrant—Use of warrant prescribed in Form VIII, Sch. V—Legality of warrant—Criminal Procedure Code (Act V of 1898), s. 100.* It is immaterial what form is used for a search-warrant under s. 100 of the Criminal Procedure Code, provided that the substance of it complies with the requirements of the section. A search-warrant intended to be issued under s. 100 of the Criminal Procedure Code, and drawn up in accordance with Form VIII, Sch. V,

SEARCH-WARRANT—*concld.*

relating to search-warrants under s. 96, but with alterations adapted to meet the requirements of the former section, is legal. *Gurameah* v. *King-Emperor, 16 C. W. N. 336*, approved. *Bisu Haldar* v. *Emperor, 11 C. W. N. 836*, distinguished. LEGAL REMEMBRANCER *v.* MOZAM MOLLA (1918). **I. L. R. 45 Calc. 905**

SECOND APPEAL.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 110, O. XLV, R. 5. **I. L. R. 42 Bom. 609**

See CUSTOM OF USAGE. **I. L. R. 45 Calc. 285**

See POSSESSORY SUIT. **I. L. R. 45 Calc. 519**

——— **construction of document—**

See CONTRACT . **I. L. R. 42 Bom. 344**

——— **interference by High Court, on—**

See EVIDENCE ACT (I OF 1872), S. 58. **I. L. R. 42 Bom. 352**

1. ——— *High Court, if can see whether case decided by lower Court on surmise and conjecture.* It is open to the High Court in second appeal to see whether the lower Appellate Court has, as alleged, decided the case not on evidence but on surmise and conjecture. DHRUPADA CHANDRA KOLEY *v.* HARI NATH SINGH (1918). **22 C. W. N. 826**

2. ——— *New point, taken in second appeal, if to be allowed—New point of law involving questions of fact, if can be taken for the first time in second appeal—Bengal Tenancy Act (VIII of 1885), s. 29, if can be applied in second appeal, where there is no finding by the lower Courts as to whether the tenant is an occupancy raiyat.* Plaintiff sued for rent at Rs. 48 per year on the basis of a *kabuliyat*, according to the terms of which a remission of Rs. 15 per year was to be allowed till the expiry of the lease and after which plaintiff would be entitled to realise at the full rate of Rs. 48. The suit was brought for rents of years after the expiry of the lease and defendant pleaded that the plaintiff had waived his right to realise at Rs. 48, by continuing to realise at the old rate even after expiry of the lease. On second appeal to the High Court a new point was taken that the lease was a mere device to evade the provisions of s. 29 of the Bengal Tenancy Act. *Held*, that it was not right, in second appeal, to allow a point to be taken which was not taken in either of the lower Courts and which involved two questions of fact. First, it had to be shewn that the defendant was an occupancy raiyat, and even if that were shewn, it would further have to be proved that the contract was a mere device to evade the provisions of the statute. JADAB CHANDAR MOULIK *v.* MANIK SARKAR (1917) . . **22 C. W. N. 156**

3. ——— *Pleadings of both parties found false—Different facts found by lower Appellate Court on evidence—Second appeal, High Court, if should proceed on pleadings.* Where the lower Appellate Court found the cases set up by both parties to be false: *Held*, on second appeal, that the High Court should proceed not on the pleadings but on the facts found. RAM NARESH OJHA *v.* GOURI SHANKAR (1917). **22 C. W. N. 149**

SECOND MORTGAGE.

See MORTGAGE . **I. L. R. 45 Calc. 702**

SECURITY.

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS. 7 AND 9. **I. L. R. 40 All. 81**

SECURITY FOR COSTS.

——— *Appeal in formâ pauperis—Civil Procedure Code (Act V of 1908), O. XLI, r. 10, not applicable to pauper appeals—Security should not be demanded.* The plaintiff having obtained a decree in the lower Court, the defendant appealed and applied for leave to appeal *in formâ pauperis*. The application was granted. The defendant-appellant, however, resided out of British India and was not possessed of sufficient immoveable property in British India. The plaintiff-respondent having demanded security for costs incurred in the lower Court and costs of the appeal under O. XLI, r. 10 of the Civil Procedure Code, 1908. *Held*, that the general provisions relating to appeals in O. XLI, r. 10, Civil Procedure Code, 1908, did not apply to pauper appeals so as to impose upon the Court the duty of demanding security from a pauper appellant, who having been found to be a pauper *ex hypothesi* could not give security. *Wille* v. *St. John*, [*1910*] *1 Ch. 701*, followed. KHEMRAJ SHRIKRISHNADAS *v.* KISANLALA SURAJMAL (1917). **I. L. R. 42 Bom. 5**

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, SS. 110 (*f*) AND 117 . . **I. L. R. 40 All. 372**

See CRIMINAL PROCEDURE CODE, SS. 110, 123 . . . **I. L. R. 40 All. 39**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, SS. 107, 125, 438 . . **I. L. R. 40 All. 140**

SELF-ACQUIRED PROPERTY.

——— **blending of—**

See HINDU LAW—JOINT FAMILY. **I. L. R. 45 Calc. 733**

SERVICE OF NOTICE.

——— **onus of—**

See PUBLIC DEMANDS. **I. L. R. 45 Calc. 496**

SET-OFF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 70, O. XXI, R. 72. **I. L. R. 42 Bom. 621**

SETTLEMENT PROCEEDINGS.

See WAJIB-UL-ARZ. **I. L. R. 45 Calc. 793**

SHAREHOLDER.

See PREFERENCE SHAREHOLDERS.

See COMPANIES ACT (VI OF 1882), SS. 45, 58 . . **I. L. R. 42 Bom. 595**

See COMPANY . **I. L. R. 42 Bom. 264**

SHARES.

——— **pledge of—**

See COMPANY . **I. L. R. 42 Bom. 159**

SHARES—*concld.*

See ADMINISTRATION.

I. L. R. 45 Calc. 653

1. ——— *Transfer by a person in possession—Judicial possession—Possession for a particular purpose—Contract Act (IX of 1872), s. 108—Bonâ fide purchaser for value—Share certificate with blank transfer deeds, whether negotiable—Usage.* The defendant Bank bought 25 jute shares for one of their constituents which consisted of the share certificate and a blank transfer-deed signed by the registered holder which were made over by the officer in charge of their Safe Custody Department to the Head Clerk of that Department in usual course. The clerk fraudulently disposed of them to Sham Das Sil, who again sold them to other persons. The plaintiff firm bought them from the defendant firm of Baijnath Champalall. Both the plaintiff firm and the defendant firm were *bonâ fide* purchasers for value. *Held*, that the Head Clerk was not in possession of the shares within the meaning of s. 108 of the Contract Act and that the plaintiffs acquired no title in them. *Held*, also, that the share certificates with blank transfer deeds signed by the registered holder were not negotiable instruments. ROOP CHAND JANKIDAS *v.* THE NATIONAL BANK OF INDIA, LD. (1918).

22 C. W. N. 1042

2. ——— *Transfer by a person in possession—Contract Act (IX of 1872), s. 108—Obtaining possession by fraud—Transfer to a bonâ fide purchaser for value—Negotiability by custom—Share certificate with blank transfers, whether negotiable—Negotiability by estoppel—"Goods," meaning of—Remedy of the bonâ fide purchaser for value—Costs.* Share certificates accompanied by transfer deeds endorsed in blank by the registered holder are not negotiable. Before an instrument can be considered negotiable it must be in a form which renders it capable of being sued on by the holder of it *pro tempore* in his own name and it must be by the custom of trade transferable, like cash, by delivery. The right principle to adopt with reference to such blank transfers duly signed by the registered holder of the shares is to hold that each prior holder confers upon the *bonâ fide* holder for value of the certificate for the time being an authority to fill in the name of the transferree and is estopped from denying such authority; and to this extent, and in ths manner, but no further, he is estopped from denying the title of such holder for the time being. The plaintiff firm claimed to be the owners of 25 jute shares which they purchased from the defendant *L* on the 7th May 1917 and got their names registered in the books of the Company. At the time of the sale the plaintiff obtained possession of the certificate for the said shares and a blank transfer deed signed by the registered holder. The defendant *L* bought the said shares from one *U* who fraudulently obtained possession of them from the defendant *S* who was the owner of the said shares. It was not clear what was the nature of the transaction between the defendant *L* and *U*. The purchase by the plaintiff was *bonâ fide* and for value. *Held*, that the plaintiff did not acquire any title to the said shares and were entitled to the value they paid for them from the defendant *L* with interest. HAZARI MAL SHOHANLAL *v.* SATIS CHANDRA GHOSH (1918).

22 C. W. N. 1036

SCHEDULED DISTRICTS ACT (XIV OF 1874).

——— **rr. 8, 16—**

See AGENCY RULES OF GODAVARI DISTRICT . . **I. L. R. 41 Mad. 325**

SHIPPING DOCUMENTS.

See C. I. F. CONTRACTS.

I. L. R. 42 Bom. 473

SIR LAND.

——— **mortgage of—**

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898), S. 45, SUB-SS. (*1*), (*6*).

L. R. 45 I. A. 179

SLANG TERMS.

See MISDIRECTION.

I. L. R. 45 Calc. 557

SMALL CAUSE COURT.

See CIVIL AND REVENUE COURTS.

I. L. R. 40 All. 51

——— **new trial—**

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 38.

I. L. R. 42 Bom. 80

SMALL CAUSE COURT SUIT.

See CIVIL PROCEDURE CODE (1908), S. 24.

I. L. R. 40 All. 525

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 31.

I. L. R. 40 All. 142

SON.

See HINDU LAW—ADOPTION.

I. L. R. 42 Bom. 547

SPECIAL JUDGE.

——— **order of—**

See APPEAL . **I. L. R. 45 Calc. 638**

SPECIFIC PERFORMANCE.

——— *Specific performance of unregistered agreement to mortgage on which an advance has been paid, whether enforceable—Swamibhogam, whether lease or mortgage.* The plaintiff sued for specific performance of an agreement in writing but not registered by which the first defendant agreed *inter alia* to execute a deed of swamibhogam in respect of the suit lands to be enjoyed by the plaintiff for twenty years for a consideration of Rs. 5,000 which could however be repaid at defendants' option after eight years from its date. The plaintiff having advanced about Rs. 4,000 and not having obtained possession or a mortgage-deed sued for specific performance. The first defendant pleaded that the agreement was one to execute a lease and as such required registration and, not being registered, could not form the basis of a suit for specific performance; he further contended that even if the agreement were one to execute a mortgage, no suit for specific performance to enforce an agreement to grant a mortgage was sustainable. *Held*, that the agreement was one to grant a mortgage and as such did not require registration; and that a Court will not specifically enforce an agreement to lend or borrow money whether on security or not; but where money has been advanced either wholly or in part, if the debtor is prepared to pay off the advance at once, the Court will not decree specific performance, but if the borrower is not prepared to pay off the

SPECIFIC PERFORMANCE—*concld.*

advance the Court should decree specific performance. *South African Territories* v. *Wallington*, [*1898*] *A. C. 309*, referred to. *Ashton* v. *Corrigan*, *L. R. 13 Eq. 76*, and *Herman* v. *Hodges*, *L. R. 16 Eq. 18*, followed. MEENAKSHISUNDARA MUDALIAR *v.* RATHNASAMI PILLAI (1918).

I. L. R. 41 Mad. 959

SPECIFIC RELIEF ACT (I OF 1877).

——— *Suit to recover possession of land previously dealt with under s. 145, Criminal Procedure Code. Per* RICHARDSON, *J.* When a Magistrate's order is attacked in a collateral proceeding as *ultra vires*, it should be shown to have been without jurisdiction in the strict sense of the term, and not in the loose sense in which that term is sometimes used in proceedings for the revision of orders under s. 145, Criminal Procedure Code, under the High Court's powers of superintendence under s. 15 of the Charter Act (now s. 107 of the Government of India Act of 1915). When an enquiry has been properly entered upon, it is not every error which makes the result invalid. Before want of jurisdiction can be established in such a case a vice must be clearly established which infects the whole proceeding. EAR MAHAMED SHAHA *v.* HEYAT MAHAMED SAHA (1917).

22 C. W. N. 342

——— **s. 9—**

See POSSESSORY SUIT.

I. L. R. 45 Calc. 519

1. ——— *Suit for recovery of possession of immovable property—Construction of plaint—Suit framed as a suit on title, but also referring to s. 9 of the Specific Relief Act, 1877—Practice.* In a suit for recovery of possession of immovable property from which the plaintiff alleged that his sub-tenants had been ejected by the defendants the plaintiff claimed ( ) a declaration of his title to, and possession of, the land in suit, (ii) damages for dispossession, and (iii) costs. In the body of the plaint it was mentioned that the suit was under s. 9 of the Specific Relief Act, 1877, and, therefore, the full court fees had not been paid. At the hearing, the plaint was amended by striking out the claim for a declaration of title ; but the claim for damages was retained. *Held*, on a construction of the plaint, that the suit was in substance a suit for possession based on title, and should have been tried as such, notwithstanding the reference in the plaint to s. 9 of the Specific Relief Act. *Nazir Ahmad* v. *Abid Ali*, *8 A. L. J. 910*, referred to. NARAIN DAS *v.* HET SINGH (1918).

I. L. R. 40 All. 637

2. ——— *Suit, if lies after property attached under Criminal Procedure Code (Act V of 1898), s. 146.* Where following upon the dispossession by defendant of the plaintiff, an order for attachment was made under s. 146, Criminal Procedure Code, in a proceeding in respect of the same property under s. 145, Criminal Procedure Code. *Held*, that the plaintiff after this has no right to relief under s. 9 of the Specific Relief Act. AZIMUDDIN AHMED *v.* ALAUDDIN BHUNJA (1917) . . . **22 C. W. N. 931**

——— **s. 21**—*Agreement to arbitrate—Suit, when demand and refusal not proved, if by itself a refusal to arbitrate—Implied refusal.* Where two days after concluding an agreement to refer their disputes to arbitration, one of the parties instituted a suit and it was urged in defence that the suit

SPECIFIC RELIEF ACT (I OF 1877)—*concld.*

——— **s. 21**—*concld.*

was barred by s. 21 of the Specific Relief Act, but there was no allegation in the written statement that the plaintiff refused to perform the contract to refer to arbitration nor was any evidence given to prove such a refusal: *Held, per* FLETCHER, *J.* That the filing of the suit was not a "refusal" within the meaning of s. 21 of the Specific Relief Act. *Per* SHAMSUL HUDA, *J.* Neither demand nor refusal need be express and both may be implied. That the institution of the suit in circumstances which showed that plaintiff was determined not to go to arbitration amounted to a refusal to perform the contract to arbitrate. DINABANDHU JANA *v.* DURGA PRASAD JANA (1918).

22 C. W. N. 362

——— **s. 23—**

See CONTRACT . **I. L. R. 42 Bom. 344**

——— **s. 42**—*Right to play music in public street—Whether the declaraion of right can be claimed as a right—Civil Court.* The plaintiffs, trustees of a Hindu temple, brought a suit for a declaration under s. 42 of the Specific Relief Act, 1877, that they were entitled to play music while going in procession past a Mahomedan mosque situated in a public street. *Held*, that the plaintiffs were not entitled to have the right to play music in a public street claimed and declared as a right. *Per* HEATON, *J.* The right to use a street as a thoroughfare is a right which a Court might properly declare ; but the right to pass along a street playing music is not a right which the Courts ought to recognise in that sense. VENKATESH APPASHET *v.* ABDUL KADIR (1918) . . **I. L. R. 42 Bom. 438**

——— **s. 42, Ill. (e)—**

See DECLARATOTY DECREE.

I. L. R. 45 Calc. 510

——— **s. 45—**

See DESIGN . **I. L. R. 45 Calc. 606**

See MUNICIPAL ELECTION.

I. L. R. 45 Calc. 950

STAMP.

See STAMP ACT (II OF 1899).

See STAMP ACT (II OF 1899), s. 62, SCH. I, ART. 5 . . **I. L. R. 40 All. 19**

——— **on a promissory note executed in Hyderabad—**

See PROMISSORY NOTE.

I. L. R. 42 Bom. 522

STAMP ACT (II OF 1899).

——— **s. 25**—*Marupat—Counterpart of lease—Document giving a charge on improvements for arrears of rent—Stamp duty, whether payable both as counterpart and as mortgage.* Where a tenant executed a *marupat* in favour of a landlord, agreeing therein that the arrears of rent, if any, should be a charge on the improvements that might be made by him. *Held*, that a *marupat* is the counterpart of a lease or a deed executed by a tenant promising to pay a certain rent, and that the document in question must be stamped both as a counterpart and as a mortgage. GOVINDAN NAMBUDIRI *v.* MOIDIN (1917) . . **I. L. R. 41 Mad. 469**

——— **ss. 40, 57**—*Instrument certified by Collector to have been duly stamped—Reference by Chief Controlling Revenue Authority to High Court questioning correctness of Collector's decision—Juris-*

STAMP ACT (II OF 1899)—*concld.*

———— **ss. 40, 57**—*concld.*

diction. Held, that if a Collector has taken action under s. 40, sub-s. (*1*) (*b*) of the Indian Stamp Act, 1899, and, having received the deficient duty and the penalty imposed, has certified under sub-section (*1*) (*a*) that the instrument before him is duly stamped the effect of sub-s. (*2*) is that the jurisdiction of the Chief Controlling Revenue Authority to refer to, the High Court, under s. 57 of the Act, the question whether such instrument is in fact sufficiently stamped or not is ousted. *Reference under Stamp Act, s. 57, I. L. R. 25 Mad. 752*, followed. STAMP REFERENCE BY BOARD OF REVENUE (1917) . . **I. L. R. 40 All. 128**

———— **s. 62 ; Sch. I, Art. 5**—*Stamp—Petition to Court intimating compromise of suit—Agreement.* The parties to a suit came to terms out of Court, and presented a joint petition to the Court stating the terms of compromise arrived at and asking that a consent decree might be given in accordance therewith. *Held*, that such petition was to be stamped merely as a petition to the Court and did not require to be engrossed on a general stamp. EMPEROR *v.* RAM SARAN LAL (1917). **I. L. R. 40 All. 19**

STANDARD OF PROOF.

See CONTEMPT OF COURT. **I. L. R. 45 Calc. 169**

STANI.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 124 . . **I. L. R. 41 Mad. 4**

STATUS OF TENANT.

See BENGAL TENANCY ACT, SS. 5, 103B. **I. L. R. 45 Calc. 805**

STATUTE 5 & 6 GEO. V. C. 61.

———— **s. 107**—

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 36 **I. L. R. 40 All. 153**

STEP-IN-AID OF EXECUTION

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CLS. (*5*) AND (*6*). **I. L. R. 42 Bom. 420**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (*6*). **I. L. R. 42 Bom. 553**

STILL-HEAD DUTY.

See ADMINISTRATION. **I. L. R. 45 Calc. 653**

STREET.

See BOMBAY CITY MUNICIPAL ACT (BOM. ACT III OF 1888 AS AMENDED BY BOM. ACT V OF 1905), SS. 296, 297, 299, 301 . **I. L. R. 42 Bom. 462**

SUB-MORTGAGE.

———— **by sureties**—

See MORTGAGE . **I. L. R. 45 Calc. 702**

SUB-SOIL RIGHTS.

See LEASE, CONSTRUCTION OF. **I. L. R. 45 Calc. 87**

SUBSTITUTION.

See PARTIES . **I. L. R. 45 Calc. 862**

SUCCESSION.

See GHATWALI TENURE. **L. R. 45 I. A. 251**

See HINDU LAW—INHERITANCE. **I. L. R. 40 All. 470**

See HINDU LAW—SUCCESSION. **I. L. R. 40 All. 178**

SUCCESSION CERTIFICATE ACT (VII OF 1889).

———— **ss. 7, 9**—*Certificate of succession—Security—Application by widow of separated Hindu.* Where, under s. 9 of the Succession Certificate Act, 1889, the requiring of security is optional, security should not be taken from the widow of a separated Hindu asking for a certificate to enable her to collect debts due to her husband, in the absence of special circumstances rendering the taking of security necessary. NARAIN DEI *v.* PARMESHWARI (1917) . . . . **I. L. R. 40 All. 81**

SUIT.

See ABATEMENT OF SUIT.

See PARTITION . **I. L. R. 45 Calc. 873**

———— **above Rs. 5,000**—

See JURISDICTION **I. L. R. 45 Calc. 926**

———— **by zemindar to recover haqq, cess, etc.**—

See PROVINCIAL SMALL CAUSE COURTS ACT, 1887, SCH. II, ART. 13. **I. L. R. 40 All. 663**

———— **dismissal of**—

See CIVIL PROCEDURE CODE (1908), O. IX, RR. 3, 6 . **I. L. R. 40 All. 590**

———— **for money had and received**—

See PROVINCIAL INSOLVENCY ACT (VI OF 1907), S. 16 (*1*). **I. L. R. 41 Mad. 923**

———— **valuation of**—

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 **I. L. R. 40 All. 505**

———— **withdrawal of**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1. **I. L. R. 42 Bom. 155**

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1 ; S. 115. **I. L. R. 40 All. 612**

———— *Limitation—Bengal Tenancy Act (VIII of 1885), ss 104H, sub-s. (2), 184, 185—Limitation Act (IX of 1908) ss. 29, 15, applicability of—Civil Procedure Code (Act V of 1908), s. 80. A* instituted a suit under s. 104H of the Bengal Tenancy Act against the Secretary of State for India in Council on the 10th December 1910, in respect of a village, the Record of Rights of which was finally published on the 2nd June 1910. *A* took exception to the latter. Prior to the institution of the suit, *A* served a notice on the defendant as required by s. 80 of the Civil Procedure Code. *Held*, that the suit was barred by limitation. *Held*, also, that s. 15, sub-s. (*2*) of the Limitation Act which was made applicable to suits, appeals and applications mentioned in Sch. III annexed to the Bengal Tenancy Act by virtue of s. 185, sub-s. (*2*), could not possibly apply to suits instituted under s. 104H which were not

SUIT—*concld.*

mentioned in Sch. III. On a plain reading of the provisions of s. 185 of the Bengal Tenancy Act along with s. 15, sub-s. (2) of the Limitation Act, the latter could not be applied to extend the period of six months provided for the institution of suits under s. 104H of the Bengal Tenancy Act. *Radhashyam Kar* v. *Dinabandhu Biswas, 18 C. W. N. 31 ; 18 C. L. J. 533, Sharoop Dass Mondal* v. *Joggessur Roy Chowdhry, I. L. R. 26 Calc. 564, Dulhin Mathura Das Koer* v. *Bansidhar Singh, 16 C. W. N. 904, Srinivasa Ayyangar* v. *The Secretary of State for India, I. L. R. 38 Mad. 92*, referred to. *Dropadi* v. *Hira Lal, I. L. R. 34 All. 496*, distinguished. SECRETARY OF STATE FOR INDIA *v.* GANGADHAR NANDA (1917) . . **I. L. R. 45 Calc. 934**

SUMMARY SETTLEMENT.

See KADIM INAMDAR.
I. L. R. 42 Bom. 112

SUMMONS.

See PENAL CODE (ACT XLV OF 1860), S. 173 . . **I. L. R. 40 All. 577**

SURETY.

See MORTGAGE . **I. L. R. 45 Calc. 702**

——— **attachment of property of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 145 ; O. XXXII, R. 6.
I. L. R. 41 Mad. 40

T

TALUQA.

See HINDU LAW—INHERITANCE.
I. L. R. 40 All. 470

TEMPLE PROPERTY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 42 Bom. 742**

TENANCY.

See SALE . . **I. L. R. 45 Calc. 294**

TENANT.

——— **status of—**

See BENGAL TENANCY ACT, 1885, SS. 5, 103B. . **I. L. R. 45 Calc. 805**

TENANTS-IN-COMMON.

See PARTIES, JOINDER OF.
I. L. R. 42 Bom. 87

THAKBUST MAP.

——— **evidentiary value of—**

See LAKHERAJ LANDS.
I. L. R. 45 Calc. 574

THEFT.

See AUTREFOIS ACQUIT.
I. L. R. 45 Calc. 727

THEKADAR.

See OUDH RENT ACT (XXII OF 1886), S. 3 (*10*) and CH. VIIA.
I. L. R. 40 All. 541

See USUFRUCTUARY MORTGAGE.
I. L. R. 40 All. 429

TIME-BARRED DEBT.

See CONTRACT ACT (IX OF 1872), SS. 126, 128 . . **I. L. R. 42 Bom. 444**

TITLE.

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 756

——— *Purchase giving right to get a title, but not giving actual title—Benami purchase—Transfer by true owner—Action of father making transfer creating estoppel binding son—Conduct causing change of position in transferee—Onus of proof on person asserting minority of transferor.* The plaintiff (respondent) purchased the village of Badam in the zemindari of the late Raja of Deo, from *R*, a dancing girl, the natural daughter of the Raja, who was the father of the defendant (appellant). In 1886 the Raja's estate being heavily involved in debt, the provisions of the Chota Nagpur Encumbered Estates Act (VI of 1876 as amended by V of 1884) were extended to Deo by a special Act, and a manager was appointed who, acting under the powers given him by the Act, sold the village by public auction, and it was purchased by *K*, who, it afterwards appeared, was a *benamidar* for the Raja who provided the purchase money. No conveyance of the village was ever made by the manager to *K*. When the management came to an end in 1896, and the estate was restored to the Raja he caused *L*, the son of *K* (who had died), to execute a conveyance of Badam in favour of *R* in order to benefit her and *M* her mother, *L* merely acting on the command of the Raja. *R* being then a minor put in through *M* a petition for registration and mutation of names, and the Raja himself assisted her, asking that her petition might be granted, and her name be inserted on the register, and stating that he had no objection whatever to that being done, and *R's* name was accordingly entered on the register as proprietor of the village. In October 1898 the Raja died and, his son being a minor, the estate came under the Court of Wards whose manager in 1899 summarily ejected *R* who was in possession, and conveyed the village to the surviving widow of the deceased Raja as being *gur* property and descendible from Rani to Rani. An application by her for mutation of names was opposed by *R* and rejected. The Rani thereupon filed a suit against *R* and the appellant basing her case on the allegation that *K* was *benamidar* for her. But the Subordinate Judge held that he was a *benamidar* of the late Raja, and dismissed the suit, a decision which was affirmed by the District Judge. In 1908 *R* executed the conveyance in favour of the plaintiff who brought the present suit against *R* and the appellant for declaration of title and for possession. The defence was a denial of *R's* title to convey, and a denial of her power to do so as being a minor. The Subordinate Judge upheld both defences and dismissed the suit. The High Court reversed that decision and gave the plaintiff a decree. *Held* (affirming that decision), that the onus of proving *R's* minority was on the appellant and he had not established his assertion. *Held*, also, that the sale by auction, though it gave *K* a right to get a title, did not give him an actual title. Both Courts found that *K* had failed to prove he was a true purchaser for value. When, therefore, *L* executed the conveyance in favour of *R* the late Raja was the true owner. *K* was a trustee for him, and the trusteeship was all that *L* succeeded to. The late Raja too was proprietor of the estate of which Badam was a part ; so that if by renunciation or limitation the right of *K* to get a conveyance became extinct, the full right and title were in the late Raja ; and not only did

TITLE—*concld.*

he cause *L* to execute the conveyance, but he actually assisted *R* to get registration of her name as owner. By so doing he caused her to change her position, for by such registration she became bound to the Government for all the liabilities attaching to the registered holders of immovable property. If the late Raja had lived and attempted to regain the property, that conduct would have estopped him from doing so. The appellant was his son, and succeeded by gratuitous title, and he could not, therefore, do what his father would have been unable to do. RAJA OF DEO *v.* ABDULLAH (1918) . . . . **I. L. R. 45 Calc. 909**

TORT.

——— *Negligence— Municipalities, liability of—Repair of road—Independent contractor—Heaping of gravel on road without light—Injury to plaintiff—Damages—Statutory bodies, liability of—District Municipalities Act (IV of 1884), ss. 172 and 173—Madras Motor Vehicles Act (I of 1907)—Absence of licence, effect of.* The plaintiff sued the Municipality of Vizagapatam to recover compensation for injuries sustained by him owing to the negligent stacking of gravel in a municipal road which was being repaired by a contractor employed by the municipality. The defendant pleaded non-liability under the general law and also on the ground that it had employed an independent contractor for the repair of the road. *Held,* that the municipality was liable to pay damages to the plaintiff for the injuries sustained by him. *Per* SESHAGIRI AYYAR, *J.* In laying and maintaining a road, municipalities in this country are not exercising purely sovereign functions and consequently they are liable for misfeasance. *The Secretary of State* v. *Cockcraft, I. L. R. 39 Mad. 351,* distinguished. The absence of a provision for payment of damages in the District Municipalities Act which directs the application of the Municipal fund in a particular manner, does not affect the right of a person against whom a wrong has been committed by the statutory body to recover compensation for such injury. The fact that the plaintiff did not obtain a licence under the Madras Motor Vehicles Act at the time of the accident did not disentitle him to damages. Although an employer is not *ordinarily* liable for illegality or neglect on the part of a contractor employed by him, there are certain recognized exceptions to the rule, namely:—(i) Where the employer is aware that the doing of a contract work involved a public danger, he ought to see that the contractor so discharges his duty as to avoid such a danger; *The Corporation of the Town of Calcutta* v. *Anderson, I. L. R. 10 Calc. 445,* referred to. (ii) Where statutory bodies are entrusted with the performance of a public duty, their liability cannot be shifted to a contractor. *Hardaker* v. *Idle District Council, [1896] 1 Q.B. 335,* referred to *Per* NAPIER, *J.* (i) A statutory body like a municipal council cannot be said to be either the servant or the agent of the Crown unless it is so constituted by the provisions of the Act. (ii) With regard to statutory bodies, the liability does not depend on their levying tolls or taxes on account of the work undertaken by them. (iii) S. 173 of the District Municipalities Act does not control the provisions of s. 172 of the same Act. (iv) Where a statutory authority has power to do something to a road which will make it dangerous while it is being done it is liable for any negligence in the doing of that which has to be done, whether the action be that

TORT—*concld.*

of its own servant or of an independent contractor. MUNICIPAL COUNCIL OF VIZAGAPATAM *v.* FOSTER (1917) . . . . **I. L. R. 41 Mad. 538**

TOUTS.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 36. **I. L. R. 40 All. 153**

TRANSFER.

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 45 Calc. 765**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195. **I. L. R. 42 Bom. 190**

——— **by father, effect of—**

See TITLE, PROOF OF. **I. L. R. 45 Calc. 909**

——— **effect of—**

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 45 Calc. 515**

——— **to landlord—**

See CHAUKIDARI CHAKARAN LANDS. **I. L. R. 45 Calc. 685**

TRANSFER OF PROPERTY ACT (IV OF 1882).

——— **ss. 2 (*d*), 36—**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 7. **I. L. R. 41 Mad. 370**

——— **ss. 2 (*d*), 52—**

See COMPANY . **I. L. R. 42 Bom. 215**

——— **s. 6 (*a*)**—*Hindu law—Adoption by widow—Postponement of adopted son's estate during the widow's life—Transfer made by adopted son of property forming part of the estate in the widow's life-time—Spes successionis.* An agreement depriving an adopted son of his right to take possession of the property of his adoptive father is not prohibited by law. *Kali Das Bijai* v. *Shankar, I. L. R. 13 All. 391,* and *Visalakshi Ammal* v. *Sivaramien, I. L. R. 27 Mad. 577,* referred to. Where such an agreement has been entered into, for example an agreement giving a life estate to the adoptive mother and the remainder to the adopted son, the interest of the son is not merely that of a contingent collateral Hindu reversioner, but he has vested interest in the property of his adoptive father which he is competent to deal with, subject only to the previous life estate, He is not barred by the provisions of s. 6 (*a*) of the Transfer of Property Act, 1882, from dealing with the property. BALWANT SINGH *v.* JOTI PRASAD (1918). **I. L. R. 40 All. 692**

——— **s. 9—**

See MORTGAGE . **I. L. R. 45 Calc. 748**

——— **s. 10—**

See LEASE . **I. L. R. 45 Calc. 940**

——— **s. 53—**

See FRAUDULENT ALIENATION. **I. L. R. 41 Mad. 612**

——— *Transfer to stranger for value in fraud of creditors—Knowledge of intention to defraud, if sufficient.* A transferee who is not himself a creditor and who takes the transfer with full knowledge of the fraudulent intention of the transferor to defeat his creditors is not a transferee in good

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd.*

———— **s. 53**—*concld.*

faith and such a transfer is void as against a creditor even if the transferee has paid full value of the property purchased by him. Such a transfer cannot be held to be valid on the ground that a portion of the consideration money was applied by the transferor in payment of some debts which he owed to third persons. AFTABUDDIN CHAWDHURY *v.* BASANTA KUMAR MUKHAPADHYAYA (1916) . . . . . **22 C. W. N. 427**

———— **s. 54**—*Effect of section on doctrine of part performance where vendor has paid full purchase-money and obtained possession.* The plaintiff sued to recover possession of land which originally belonged to him and was purchased by *D* at a sale in execution of a decree for money against him. Symbolical possession was taken by *D* who agreed to convey the lands to the plaintiff in consideration of a certain sum and actually executed a conveyance which however was not registered for non-payment of the whole of the consideration money. Thereafter the land was sold in execution of another money-decree against the plaintiff, who remained in possession, and purchased by the defendant. Subsequent to this the plaintiff obtained a second *kobala* from *D* which was duly registered. It was found that the whole of the purchase-money was paid by the plaintiff to *D* before the purchase by the defendant and he was in possession at that time. *Held*, that the plaintiff at the date of the purchase by the defendant had acquired a right to the property and as *D* could not at that date enforce any right against the plaintiff, he could not contend that he had no interest in the property which could be purchased by the defendant. That in *Maung Shwe Goh* v. *Maung Inn*, *I. L. R. 44 Calc. 542* : s. c. *21 C. W. N 500*, the Privy Council only pointed out that s. 54 of the Transfer of Property Act differs from the rule of English law to this extent that it expressly lays down that a contract for the sale of immovable property does not of itself create any interest in or charge on such property. The question whether the equitable doctrine of part performance which arises from the fact that the vendor has paid the full purchase-money and has obtained possession of the property agreed to be sold is inapplicable by reason of the provisions of s. 54 of the Transfer of Property Act was not considered nor decided by their Lordships. JNAN CHANDRA DAS *v.* HARI MOHAN SEN (1917) . . . . . **22 C. W. N. 522**

———— **ss. 54, 118**—*Mutual sales of property effected by registered deeds—Subsequent agreement to exchange portions of the property sold—Agreement acted upon, but without execution of written instrument—Legal position of parties.* In 1905, *A* by means of a duly registered deed, sold property X, with other property, to *B*, and *B* similarly sold property Y, with other property, to *A*. Possession of items X and Y was, however, not transferred, and shortly afterwards *A* and *B* agreed to exchange the two properties. No deed of exchange was ever executed, but the parties remained in possession of the properties in questin from 1905 onwards. In 1915 some of the heirs of *B* sued to recover property X from *A* in virtue of the sale deed of 1905. *Held*, that in the circumstances the plaintiffs were not entitled to recover. *Kurri Veerareddi* v. *Kurri Bapireddi*, *I. L. R. 29 Mad. 336*, and *Chiddambara Chettiar* v. *Vaidilinga Padayachi*,

TRANSFER OF PROPERTY ACT (IV OF 1882) —*concld.*

———— **ss. 54, 118**—*concld.*

I. L. R. 38 Mad. 519, dissented from. *Mahomed Musa* v. *Aghore Kumar Ganguli*, *I. L. R. 42 Calc. 801*, *Maddison* v. *Alderson*, *8 A. C. 467*, *Sumsudin Ghoolam Husein* v. *Abdul Husein Kalimuddin*, *I. L. R. 31 Bom. 165*, *Karalia Nanubhai Mahomedbhai* v. *Mansukhram Vakatchand*, *I. L. R. 24 Bom. 400*, *Ram Bakhsh* v. *Mughlani Khanam*, *I. L. R. 26 All. 266*, *Begam* v. *Muhammad Yakub*, *I. L. R. 16 All. 344*, *Muhammad Talib Husain* v. *Inayati Jan*, *I. L. R. 33 All. 683*, *Jhamplu* v. *Kutramani*, *I. L. R. 39 All. 696*, and *Maung Shwe* v. *Maung Inn*, *I. L. R. 44 Calc. 542*, referred to. SALAMAT-UZ-ZAMIN BEGAM *v.* MASHA ALLAH KHAN (1917).
I. L. R. 40 All. 187

———— **ss. 58** (*a*) **and** (*d*), **67 and 68** (*c*)—*Usufructuary mortgage—Failure of mortgagor to deliver possession—Right of mortgagee to sue for sale. Held*, by the Full Bench :—Where a mortgagor fails to deliver possession to his mortgagee, the mortgage is not a usufructuary mortgage within the meaning of s. 58 (*d*) of the Transfer of Property Act, and the mortgagee is entitled to bring a suit for sale of the mortgaged property. Ss. 58 (*a*) and (*d*), 67 and 68 (*c*) of the Transfer of Property Act referred to. *Ram Narayan Singh* v. *Adhindra Nath Mukherji*, *I. L. R. 44 Calc. 388*, followed. *Arunchalam Chetti* v. *Ayyavayyan*, *I. L. R. 21 Mad. 476*, overruled. SUBBAMMA *v.* NARAYYA (1917).
I. L. R. 41 Mad. 259

———— **ss. 85, 89**—

See MORTGAGE . **I. L. R. 40 All. 407**

———— **s. 111, cl.** (*g*)—

See EJECTMENT . **I. L. R. 45 Calc. 469**

———— *Landlord and tenant—Forfeiture—Ejectment—Cause of action—Intention to determine the lease—Whether institution of the suit to eject, a sufficient manifestation of intention.* A landlord sued to eject his tenant on the ground that the lease was determined by the tenant's disclaimer of the landlord's title. The tenant contended that the landlord had no cause of action inasmuch as he had never before filing the suit done any act showing his intention to determine the lease as required by cl. (*g*) of s. 111 of the Transfer of Property Act, 1882. *Held*, that the mere institution of the suit and the assertion in the plaint as to the repudiation of the landlord's title constituted a sufficient manifestation of the landlord's intention to determine the lease. ISABALI TAYABALI *v.* MAHADU EKOBA (1917).
I. L. R. 42 Bom. 195

———— **ss. 122, 123, 126**—

See OCCUPANCY HOLDING.
I. L. R. 45 Calc. 434

TRANSFERABILITY.

See OCCUPANCY HOLDING.
I. L. R. 45 Calc. 434

TRANSFEREE.

———— **from benamidar, right of, to sue**—

See MORTGAGE . **I. L. R. 41 Mad. 435**

TRESPASS.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 120, 144.
I. L. R. 42 Bom. 333

TRIAL.

See CONTEMPT OF COURT.
I. L. R. 45 Calc. 169

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 369.
I. L. R. 42 Bom. 202

TRUSTEE.

——— **liability of, on hundi—**

See NEGOTIABLE INSTRUMENTS ACT, SS. 26, 27, 28 . **I. L. R. 41 Mad. 815**

——— **of a temple in Malabar—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 124 . . **I. L. R. 41 Mad. 4**

——— **suit against—**

See LIMITATION ACT (IX OF 1908), S. 10
I. L. R. 41 Mad. 319

TRUSTS ACT (II OF 1882).

——— **s. 90**—*Co-owner, right of, to appropriate rents collected by him towards his share.* A co-owner who has collected as rent more than sufficient to pay the Government peshkash and has paid it, is not entitled to sue another co-owner for contribution to the peshkash. S. 90 of Trusts Act (II of 1882), referred to. SIVARNARASA REDDI *v.* DORAISAMI REDDI (1918).
I. L. R. 41 Mad. 861

U

UNCERTAINTY.

See CUSTOM . **I. L. R. 45 Calc. 475**

UNCERTIFIED PAYMENT.

See LIMITATION . **I. L. R. 45 Calc. 630**

UNDER-RAIYATI HOLDING.

——— *Transferability—Purchase by landlord in execution of a money decree without objection by tenant—Title and possession.* Where an under-raiyati holding was without objection on the part of the under-raiyat sold successively in execution of two money decrees and purchased at the first sale by a stranger and at the second by the landlord who was the decree-holder. *Held*, that the title of the landlord purchaser should prevail. PRAMATHA BHUSAN DEB *v.* RAM CHARAN MONDAL (1917) . **22 C. W. N. 124**

UNDER-TENANT.

See LANDLORD AND TENANT.
I. L. R. 45 Calc. 756

UNITED PROVINCES AND OUDH ACTS.

——— **1869—I.**

See OUDH ESTATES ACT.

——— **1886—XXII.**

See OUDH RENT ACT.

——— **1901—II.**

See AGRA TENANCY ACT.

——— **1904—I.**

See GENERAL CLAUSES ACT.

——— **1910—IV.**

See UNITED PROVINCES EXCISE ACT.

UNITED PROVINCES AND OUDH ACTS—*concld.*

——— **1912—VI.**

See UNITED PROVINCES PREVENTION OF ADULTERATION ACT.

——— **1916—II.**

See UNITED PROVINCES MUNICIPALITIES ACT.

UNITED PROVINCES EXCISE ACT (IV OF 1910).

——— **s. 64** (*c*)—*Breach of conditions of licence—Breach committed by servant—Responsibility of master.* In order to establish an offence under s. 64 (*c*) of the United Provinces Act, 1910, against a licence-holder in respect of the alleged keeping of incorrect accounts by a servant, it must be shown that the licence-holder himself allowed the offence to be committed by his servant, or was cognizant of what his servant was doing. EMPEROR *v.* RAM DAS (1918) . . . **I. L. R. 40 All. 563**

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916).

——— **s. 307**—*Disobedience to notice lawfully issued by a Municipal Board—Recurring fine—Procedure necessary to imposition of daily fine.* A Magistrate convicting an accused person of an offence under s. 307 (*b*) of the United Provinces Municipalities Act, 1916, cannot, by the same order, further sentence him to a recurring fine in the event of non-compliance with the order of the Board. The liability to a daily fine in the event of a continuing breach has been imposed by the Legislature in order that a person contumaciously disobeying an order lawfully issued by a Municipal Board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the Municipal Board may consider necessary, by the institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly the appropriate amount of daily fine to be imposed under the circumstances of the case, subject to the maximum prescribed. EMPEROR *v.* AMIR HASAN KHAN (1918) . . . **I. L. R. 40 All. 569**

UNITED PROVINCES PREVENTION OF ADULTERATION ACT (VI OF 1912).

——— **ss. 4, 6**—*Commission agent exposing adulterated article of food for sale. Held*, that a commission agent who exposed for sale (but did not sell) adulterated *ghi* was liable to punishment under s. 4 of the United Provinces Prevention of Adulteration Act, 1912, and could not claim the benefit of s. 6 of the Act. EMPEROR *v.* KEDAR NATH (1918) . . . **I. L. R. 40 All. 661**

UNRECORDED CONFESSIONS.

See MISDIRECTION.
I. L. R. 45 Calc. 557

UNSETTLED PALAYAM.

——— *Alienability of, for debts of holder for the time being—Lands held on service tenure, alienability of—Enfranchisement of service*

UNSETTLED PALAYAM—*concld.*

tenure, effect of, on alienation, prior and subsequent—Regulation XXV of 1802, effect of—Private Police service, abolition of, by legislation—Military service, imposition of, on landed proprietors—Abolition of—Limitation Act (IX of 1908), Sch. II, Arts. 120, 142 and 144—Madras Regulation XI of 1816—Madras Regulation VI of 1831—Madras District Police Act XXIV of 1859—Madras Act III of 1895. Lands held on service tenure are, even apart from statute, inalienable by the Common Law of India beyond the life-time of the holder for the time being. *Papaya* v. *Ramana, I. L. R. 7 Mad. 85*, and *Pakkiam Pillay* v. *Seetharama Vadhyar, 14 Mad. L. J. 134*, followed. Abolition of service prior to the alienation renders the alienation valid. *Kustoora Koomaree* v. *Monohur Deo, (1864) W. R. 39, Ravlojirav bin Tamajirav* v. *Balvantrav Venkatesh, I. L. R. 5 Bom. 437*, and *Radhabai and Ramachandra Konher* v. *Anatrav Bhagavant Deshapande, I. L. R. 9 Bom. 198, 212*, followed. Enfranchisement of the land from service subsequent to an alienation thereof will not validate the alienation. *Padapa* v. *Swamirao, I. L. R. 24 Bom. 556*, and *Sannamma* v. *Radhabhayi, I. L. R. 41 Mad. 418.* followed. An unsettled palayam in the Presidency of Madras resembles a zamindari, is hereditary in its character and is alienable for the debts of the previous holders and of the holder for the time being, so as to bind the successors. The only difference between an unsettled palayam and a permanently settled zamindari is that in the latter the Government is precluded for ever from raising the revenue, and in the former the Government *may* or *may not* have that power. *Oolagappa Chetty* v. *Arbuthnot, L. R. 11 A. 268, 306*, followed. *Held*, on a review of the facts of the case, that the palayam of Kannivadi in Madura district which was permanently settled in 1905 and which was in the eighteenth century liable to render military and police service to the Government of the day, was as a fact unconditionally released from such services prior to 1895 and that accordingly a mortgage executed by the grandfather and father of the present zemindar in 1895 for debts incurred by the grandfather prior to that date and a decree and a Court sale held to satisfy the mortgage debt were binding upon the present zemindar and precluded him from recovering the zemindari from the auction purchaser. That the East India Company had by its Proclamations of 1799 and 1801 suppressed military service once imposed on landed proprietors in Southern India and police service similarly imposed was abolished pursuant to Regulation XXV of 1802, Regulation XI of 1816, Act XXIV of 1859, Act XVII of 1862 and Madras Act III of 1895. Regulation VI of 1831 which restrained the alienation of all public service inams is only partially repealed and replaced by Act III of 1895, as services other than those of village officers had become long ago obsolete. *Quære:* Whether if the plaintiff's father had debarred himself from suing, art. 120 of the Limitation Act was the article applicable in which case the plaintiff would not be barred. MIDNAPORE ZEMINDARI COMPANY *v.* APPAYASAMI NAICKER (1918) . . . . **I. L. R. 41 Mad. 749**

USAGE.

See CUSTOM . **I. L. R. 45 Calc. 835**

See CUSTOM OR USAGE.
I. L. R. 45 Calc. 285

USUFRUCTUARY MORTGAGE.

See TRANSFER OF PROPETRY ACT (IV OF 1882), SS. 58, (*a*) AND (*d*), 67, 68 (*c*).
I. L. R. 41 Mad. 259

——— *Lease of mortgaged property by mortgagee to mortgagor—Sale of equity of redemption to a third party in execution of a decree for arrears of rent—Liability of thekadar for rent.* Defendant, being the owner of a zemindari share, made a usufructuary mortgage of it in favour of the plaintiff. On the same date the plaintiff executed a lease of the same property for the term of the mortgage. Defendant fell into arrears with his rent, and plaintiff sued him and obtained a decree, in execution of which he brought to sale defendant's equity of redemption under the mortgage and it was purchased by a third party: the purchaser, however, did not obtain mutation of names in his favour. *Held*, on a fresh suit brought by the lessor for arrears of rent accruing due since the sale of the equity of redemption, that the defendant was still liable for payment of rent as *thekadar*. MITHAN LAL *v.* CHHAJU SINGH (1918).
I. L. R. 40 All. 429

V

VAKIL.

——— **power of, to enter into compromise—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3 AND S. 96 (*5*).
I. L. R. 41 Mad. 233

VALUATION.

See ASSESSMENT.
I. L. R. 42 Bom. 692

See RESUMPTION OF LAND.
I. L. R. 42 Bom. 668

VALUATION OF SUIT.

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 66 . **I. L. R. 40 All. 505**

VATANDAR JOSHI.

——— *Observance of non-Brahmanical ceremonies—Yajman himself performing the ceremonies—Right to recover fees.* The defendants were non-Brahmin residents of a village. Defendant No. 1's mother having died, he, with the assistance of defendant No. 2, performed over the body certain non-Brahmanical ceremonies. No fees were paid to the defendant No. 2 and the whole conduct of ceremonies was with the defendant No. 1 himself. The plaintiff, a Vatandar Joshi of the village, having sued to recover damages for loss of his customary fees: *Held*, that the plaintiff was not entitled to recover damages as the ceremonies performed were other than Brahmanical ceremonies and there was no ground upon which the plaintiff could lawfully exact the payment of his fees. *Vithal Krishna Joshi* v. *Anant Ramchandra, 11 Bom. H. C. R. 6, Dinanath Abaji* v. *Sadashiv Hari Madhave, I. L. R. 3 Bom. 9, Raja valad Shivapa* v. *Krishnabhat, I. L. R. 3 Bom. 232*, distinguished. BALA GENUJI *v.* BALWANT LAXMAN (1918) . . **I. L. R. 42 Bom. 613**

VENDOR AND PURCHASER.

See LEASE . **I. L. R. 42 Bom. 103**

See SALE OF GOODS.
I. L. R. 45 Calc. 28

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

See CHAUKIDARI CHAKARAN LANDS.

——— **ss. 50, 51**—*Legal effect of resumption of chaukidari chakaran lands and subsequent transference thereof to the zamindars, whether in such a case the zemindar acquires a new title thereto and whether it is incumbent on the putnidar to ask for a fresh settlement thereof.* Where *chaukidari chakaran* land forming part of lands settled in *putni* was resumed by Government under the provisions of the Village Chaukidars Act and was subsequently transferred to the zemindar who thereupon settled such lands with the plaintiffs who were third parties: *Held*, that the zemindar was not competent to make a settlement with the plaintiffs and that under the grant which the plaintiffs obtained they had acquired no right as against the *putnidars*. The *putnidars* were not bound to take a fresh settlement from the zemindar after resumption. *Held*, also, that the transfer of the lands by Government, subsequent to resumption, did not create a new estate in the zemindar, but the estate thus taken by him was in confirmation and by way of continuance of his existing estate. SOURENDRO MOHAN SINHA *v.* RAJENDRA NATH ROY (1917) . **22 C. W. N. 660**

——— — **s. 51**—

See CHAUKIDARI CHAKARAN LANDS.

I. L. R. 45 Calc. 515, 685

VOTERS.

——— **qualifications of**—

See MUNICIPAL ELECTION.

I. L. R. 45 Calc. 950

W

WAGER.

See CONTRACT ACT (IX OF 1872), s. 30.

I. L. R. 42 Bom. 676

WAGERING CONTRACTS.

——— *Common intention to wager essential—Speculation not equivalent to wagering—Pakki Adat—Contract Act (IX of 1872), s. 10—Bombay Act III of 1865, ss. 1 and 2.* Speculation does not necessarily involve a contract by way of wager, and to constitute such a contract a common intention to wager is essential. Even if one party to a contract were a speculator who never intended to give delivery, and that fact was known to the other party, yet in the absence of any bargain or understanding, express or implied, that the goods were not to be delivered, that would not convert a contract, otherwise innocent into a wager; nor would the mere fact, that as to the greater part of the goods there was no delivery but an adjustment of claims, vitiate the transaction. *Pakki Adat* dealings are well established as a legitimate mode of conducting commercial business in the Bombay market. *Held* (reversing the decision of the appellate High Court), that the contracts in suit were not wagering contracts. BHAGWANDAS PARASRAM *v.* BURJORJI RUTTONJI (1917) . . . . **I. L. R. 42 Bom. 373**

WAIVER.

See EJECTMENT . **I. L. R. 45 Calc. 469**

WAJIB-UL-ARZ.

See EVIDENCE . **I. L. R. 40 All. 56**

See PRE-EMPTION.

I. L. R. 40 All. 617, 626, 690

——— *Authority of, as evidence—Its importance in settlement proceedings—Presumption as to its correctness until successfully impugned though not a document creating a title—Dispute between proprietors of two adjacent villages as to the ownership of village common lands—Limitation.* The authority of a wajib-ul-arz or record-of-rights which is described by Sir Henry Maine in his "Village Communities" page 72, as a detailed statement of all rights in land drawn up periodically by the functionaries employed in settling the claims of the Government to their shares of the rental, and as the most important object of the Settlement Operations, not second even to the adjustment of Government revenue, is universally recognised. *Lali v. Murlidhar, I. L. R. 28 All. 488; L. R. 33 I. A. 97*, referred to. Though a wajib-ul-arz does not create a title, it gives rise to a presumption in its support which prevails until its correctness is successfully impugned. In a dispute between the proprietors of two villages, Mouzah Darakki and Mouzah Sher Ali, of which the former belonged to the plaintiffs, and the latter to the defendants, as to the ownership of village common lands measuring upwards of 7,989 acres, the plaintiffs contended that these lands belonged to them jointly with the defendants in proprietary right by virtue of the ownership of the two villages, and the defendants maintained that they were the exclusive proprietors, their Lordships *held* that the final determination of the case depended on the interpretation to be placed on the wajib-ul-arz in which the final result of the settlement proceedings was recorded; and on that document together with the facts of the case, the plaintiffs' claim to joint ownership failed. The statements in the other documentary evidence adduced were ambiguous and not immutable. The laches of the plaintiffs in failing to assert their claim after it had been repeatedly and consistently challenged as long ago as 1883 was a circumstance, among others, very unfavourable for its success apart from the bar of limitation. DAKAS KHAN *v.* GHULAM KASIM KHAN (1918) . . . . **I. L. R. 45 Calc. 793**

WAR.

——— **effect of**—

See SALE OF GOODS.

I. L. R. 45 Calc. 28

——— **effect of, on contracts of affreightment**—

See C. I. F. CONTRACTS.

I. L. R. 42 Bom. 473

WARRANT.

See FORM OF WARRANT.

WATER.

——— **right to the flow of**—

See EASEMENTS ACT (V OF 1882), SS. 2 (*c*) AND 17 (*c*) . **I. L. R. 42 Bom. 288**

WATER-RIGHT.

——— *Surface water—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed*

WATER-RIGHT—*concld.*

of adjacent stream by silting—His remedy—Dominant owner's right, if affected. It is well settled in this country that the owner of higher land is entitled to discharge surface water over adjacent lower land. Where, owing to the silting up of a stream into which the water thus discharged ultimately flowed, the level of the bed of the stream became higher than the adjacent lower land, to the inconvenience of the owners thereof. *Held*, that the increase of burden to the servient owners not being due to anything done by the dominant owners, the latter were still entitled to exercise their rights and it was for the servient owners to take such steps as might be advisable to deal with the difficulties created by the rise in the bed of the stream. KASISWAR MUKHERJI *v.* JYOTI KUMAR MUKHERJI (1917) . . . . . **22 C. W. N. 666**

WAY, RIGHT OF.

——————— *Suit for declaration of—Whether it is necessary to locate the exact position or to show whether any definite track was used—Plaintiff to establish the termini from and to which the way runs—Plaintiff to enjoy the right in the way pointed out by owners of servient tenement—If not, the nearest route.* In a suit for a declaration of the plaintiffs' right of way it is not necessary to locate the exact position in which the way was enjoyed over the compound of the defendants, nor is it necessary to show that any definite marked pathway over the compound was always used. If the plaintiffs establish the *termini* from which and to which the way runs, the plaintiffs would be entitled to have the right of way and that right would be enjoyed in the way that the owners of the servient tenement point out as being the track over which the way should be enjoyed; and, if not, then the plaintiffs would be entitled to enjoy the way by the nearest route. LAKHI KANTA ROY *v.* RAJ CHANDRA SHAHA (1918) . . . **22 C. W. N. 922**

WIDOW.

See HINDU LAW—GIFT.
I. L. R. 42 Bom. 136

See HINDU WIDOW.
I. L. R. 42 Bom. 719

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 141, 144.
I. L. R. 42 Bom. 714

——————— **alienation by—**

See HINDU LAW—ALIENATION.
I. L. R. 41 Mad. 75

——————— **execution of deed by—**

See DECLARATORY DECREE.
I. L. R. 45 Calc. 510

——————— **extent of power of representation.**

See HINDU LAW—JOINT FAMILY.
I. L. R. 42 Bom. 69

WILL. COL.

1. CONSTRUCTION 302
2. DEBATTAR 302
3. PROOF OF 303
4. REVOCATION 303

See WILL AND CODICIL.
22 C. W. N. 305

WILL—*contd.*

I. CONSTRUCTION.

1. ——————— *Construction—Life interests—Reversionary trust—"If then living"—Vested estate.* A Parsi by his will devised a house to his wife for her life and directed that after her decease his executors should hold the house in trust for his son *J*, for life, and in the event of *J's* death in trust for *J's* widow (as to part if he so appointed) and for *J's* issue, and in default of such issue and subject to such appointment, in trust for the testator's son *K* "if then living" *J* died unmarried in the lifetime of the testator's widow, and of *K*. *Held*, that upon the death of *J* the house vested absolutely in *K* subject to the life interest of the testator's widow. CAPADIA *v.* CAPADIA (1918) . . . **L. R. 45 I. A. 257**

2. ——————— *Construction of will—Bequest to brother's widow and on her death to her daughter—Successive interest—Absolute estate—Succession Act (X of 1865), s. 111.* Where in a will a legacy was given in the following words: "On my death my youngest brother's widow the said Bama Sundari Debya and when she is dead her daughter my niece Kusum Kamini Debi will get one-fourth share of all the self-acquired immoveable properties which I have other than my aforesaid immoveable properties." *Held*, upon a construction of the will, that the effect of the will was to give to Bama Sundari an interest for life in the self-acquired properties of the testator with a gift over on her death of an absolute interest to her daughter Kusum Kamini. The gift to Kusum Kamini was not a substitutional gift in the event of her mother Bama Sundari predeceasing the testator, but it was one of successive interests; and s. 111 of the Indian Succession Act had no application to it. HARENDRA CHANDRA LAHIRI *v.* BASANTA KUMAR MOITRA (1918).
22 C. W. N. 689

2. DEBATTAR.

——————— *Debattar created by testator—Shebaits and executors appointed—Compromise in a suit by shebait against executors—Transfer by shebaits of shebait right—Suit by executor disputing the validity of the transfer—Limitation—Indian Limitation Act (IX of 1908), Arts. 95, 91—Property already debattar if pass by will.* The testator appointed four persons as *shebaits* of the *debattar* created by him and four other persons as executors who were to be the advisors of the *shebaits*. In a suit brought by one of the *shebaits* against the executors, a compromise decree was passed in 1899 whereby the *shebaits* became entitled to appoint succeeding *shebaits* of their respective *shebaiti* rights by means of will or by any other document. Two of the *shebaits* took no part in the *sheba*. The other two transferred their *shebaiti* rights by two deeds which contained recitals showing that the transfers were for the benefit of the diety to defendants Nos. 1 and 2 who were properly qualified persons. The executors brought the present suit for recovery of possession of the *debattar* properties and for a declaration that the deeds of transfer of the *shebaiti* right were void and illegal, more than 14 years after the compromise. *Held*, that the suit in so far as it sought to nullify the deed of compromise was barred by Art. 95 of the Indian Limitation Act, and (*semble*) Art. 91 governed the suit in so far as it

WILL—*concld.*

2. DEBATTAR—*concld.*

attacked the deeds of transfer. *Held*, also, that possession having been made over by the executors to the *shebaits*, the executors became *functus officio*. Property which is already *debattar* does not pass by will to the executor. MOHENDRA NATH BAGCHI *v.* GOUR CHANDRA GHOSH (1918).

22 C. W. N. 860

3. PROOF OF.

——— *Will, proof of—Succession Act (X of 1865), s. 50—Evidence Act (I of 1872), s. 68—Examination of one attesting witness in Probate Court if sufficient to prove will.* Under s. 50 of the Indian Succession Act there must be two attesting witnesses to a will but under s. 68 of the Evidence Act the will can be proved in the Court of Probate by one of the attesting witnesses. RAMMOL DAS KOCH *v.* HAKOL KOLI KOCHINI (1917) . . . . . **22 C. W. N. 315**

4. REVOCATION.

——— *Will, revocation of—Locus standi of person seeking revocation.* A person who is entitled to a much greater benefit under a will alleged to have been revoked by another will has *locus standi* as having sufficient interest to oppose grant of probate and to apply for revocation of the probate of the later will on the ground of non-service of citation. It is not necessary to obtain probate of the earlier will in order to be competent to apply for revocation of the probate of the later will. DRAUPADI DASSYA *v.* RAJKUMARI DASSYA (1917). . . . **22 C. W. N. 564**

WILL AND CODICIL.

——— *Oudh Taluqdar's estate—Assets partly taluq and partly personal property—Codicil raising the amount of legatee's allowance, if should be construed as a textual amendment of the will—Codicil conforming to conditions, fulfilled in the case of the will, which would make it binding on taluqdari properties—Effect—Codicil directing allowance to be paid from "this date," if to be construed as a conveyance.* Where an Oudh Taluqdar executed a will bequeathing *inter alia* a monthly sum of Rs. 500 to his widow "from the estate," the said allowance being further made "a charge upon the estate which the person in possession of the taluqa was bound to discharge," and later on executed a codicil but without conforming (as he did in the case of the will) to the conditions which would make it binding on the taluqdari estate, by which he purported to raise the amount payable to the widow from Rs. 500 to Rs. 1,000 and it appeared that the taluqdar had left other properties which would be bound by wills and other testamentary instruments made with regard to such conditions: *Held*, that the codicil could not be construed as merely textually altering the terms of the will so as to indicate that the increment in the allowance was to be paid from the same source as the bequest in the will, no source having in fact been indicated by the codicil. The direction in the codicil that the amount of Rs. 1,000 was to be paid to the widow "from this date," should be construed as a wish that the allowance should begin to run at once after death, the idea that the donee was creating an annuity during his own life by *inter vivos* conveyance being opposed to the whole circumstances surrounding the execution of the document. DEPUTY COMMISSIONER OF KHERI *v.* RANI BIJAI RAJ KOER (1917) . **22 C. W. N. 305**

WILL AND CODICIL—*concld.*

WINDING UP.

See COMPANIES ACT (VI OF 1882), SS. 45, 58 . . **I. L. R. 42 Bom. 595**

See COMPANY . **I. L. R. 40 All. 45**

WITNESS.

See EVIDENCE ACT (I OF 1872), S. 132. **I. L. R. 40 All. 271**

——— **commission to examine—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXVI, R. 1. **I. L. R. 42 Bom. 136**

——— *Competency of a person, accused of an offence, as witness against another implicated therein, but separately tried—Admissibility of the deposition of a witness against himself on his subsequent trial—Evidence Act (I of 1872), ss. 118, 132—Oaths Act (X of 1873), s. 5—Criminal Procedure Code Act (V of 1898), s. 342 (4).* S. 5 of the Oaths Act (X of 1873) and s. 342 (4) of the Criminal Procedure Code apply only to the accused actually under trial at the time. Such person cannot, therefore, be sworn as a witness, and no accused jointly tried is a competent witness for, or against, the co-accused. But when accused persons are tried separately, each one, though implicated in the same offence, is a competent witness at the trial of the other. *Reg.* v. *Narayan Sundar, 5 Bom. H. C. R. 1*, and *Empress* v. *Durant, I. L. R. 23 Bom. 213*, followed. *Banu Singh* v. *Emperor, I. L. R. 33 Calc. 1353*, and *Amrita Lal Hazra* v. *Emperor, I. L. R. 42 Calc. 957*, approved. *Queen-Empress* v. *Mona Puna, I. L. R. 16 Bom. 661, Subrahmania Ayyar* v. *King-Emperor, I. L. R. 25 Mad. 61*, and *Queen-Empress* v. *Hussein Haji, I. L. R. 25 Bom. 422*, referred to. A previous deposition is admissible against the witness on his subsequent trial, unless he has brought himself within the protection of the proviso to s. 132 of the Evidence Act. *King-Emperor* v. *Nanda-Gopal Roy, 20 C. W. N. 1128*, explained and distinguished. AKHOY KUMAR MOOKERJEE *v.* EMPEROR (1917).

I. L. R. 45 Calc. 720

WORDS AND PHRASES.

——— **"affected"**

See RECOUPMENT. **I. L. R. 45 Calc. 343**

——— **"betterment."**

See RECOUPMENT. **I. L. R. 45 Calc. 343**

——— **"Christian"—**

See CHRISTIAN MARRIAGE ACT (XV OF 1872), SS. 3 AND 68. **I. L. R. 40 All. 393**

——— **"Court"—**

See CIVIL PROCEDURE CODE (1908), O. XXI, RR. 89, 92. **I. L. R. 40 All. 425**

See PARTITION . **I. L. R. 45 Calc. 873**

See SANCTION FOR PROSECUTION. **I. L. R. 45 Calc. 585**

WORDS AND PHRASES—*contd.*

———— "Court of Justice"—

See SANCTION FOR PROSECUTION.
I. L. R. 45 Calc. 585

———— "due diligence"—

See LIMITATION . **I. L. R. 45 Calc. 94**

———— "dwelling house"—

See PARTITION . **I. L. R. 45 Calc. 873**

———— "finally decided"—

See RES JUDICATA.
I. L. R. 45 Calc. 442

———— "judgment"—

See APPEAL . **I. L. R. 45 Calc. 818**

———— "lawful guardianship"—

See PENAL CODE (ACT XLV OF 1860), SS. 366, 368 . **I. L. R. 40 All. 507**

———— "mai hak hakuk"—

See LEASE, CONSTRUCTION OF.
I. L. R. 45 Calc. 87

———— "marry"—

See ABDUCTION . **I. L. R. 45 Calc. 641**

———— "moveable property"—

See PENAL CODE (ACT XLV OF 1860), SS. 403 AND 22 **I. L. R. 40 All. 119.**

———— "occupier"—

See MUNICIPAL ELECTION.
I. L. R. 45 Calc. 950

———— "Official Gazette"—

See REVENUE SALE.
L. R. 45 I. A. 205

———— "other sufficient grounds"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII **I. L. R. 41 Mad. 701**

———— "parjot"—

See EVIDENCE . **I. L. R. 40 All. 56**

———— "period of limitation prescribed"—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 48.
I. L. R. 42 Bom. 367

———— "preservation of line of street"—

See BOMBAY CITY MUNICIPAL ACT (BOM. III OF 1888, AS AMENDED BY BOM. V OF 1905), SS. 296, 297, 299, 301.
I. L. R. 42 Bom. 462

———— "proprietor"—

See AGRA TENANCY ACT (II OF 1901), S. 150 . **I. L. R. 40 All. 656**

———— "strict proof"—

See LIMITATION ACT (IX OF 1908), SS. 5, 14 . **I. L. R. 42 Bom. 295**

———— "subject matter"—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1.
I. L. R. 42 Bom. 155

———— "sufficient cause"—

See LIMITATION . **I. L. R. 45 Calc. 94**

WORDS AND PHRASES—*concld.*

———— "until"—

See CONTRACT FOR SALE.
I. L. R. 45 Calc. 481

———— "up to"—

See CONTRACT FOR SALE.
I. L. R. 45 Calc. 481

WORKMAN.

———— breach of contract by—

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).

WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).

1. ———— *Scope of the Act—Act applicable not merely to fraudulent breaches of contract.* The provisions of Act No. XIII of 1859 are not applicable merely to fraudulent breaches of contract, but can and must be enforced in respect to any breach of a contract within the scope of the Act. *Emperor* v. *Bakhtawar, I. L. R. 40 All. 282,* followed. AZIZ-UR-RAHMAN *v.* HANSA (1918) . . . **I. L. R. 40 All. 670**

2. ———— *Scope of the Act—"Workman," meaning of—Status of accused, proof of—Duty of complainant to prove—Absence of proof.* The accused received an advance of Rs. 2,500 and contracted to supply coolies to a rubber estate. Under the contract, he was to receive a commission, of 10 per cent. on the wages of the Kol maistris and coolies and an additional Rs. 25 a month, if he resided on the estate. Having failed to fulfil his contract, he was proceeded against under the Workman's Breach of Contract Act. On a difference of opinion between SADASIVA AYYAR and PHILLIPS, *JJ.*, as to whether the accused was a "workman" within the meaning of the Act: *Held,* by AYLING, *J.*, agreeing with SADASIVA AYYAR, *J.*:—(i) That the accused was not a "workman" within the meaning of the Act, and (ii) that the word "workman" means a person who engages in manual labour of some kind, whether skilled or unskilled. *Gilby* v. *Subbu, I. L. R. 7 Mad. 100, Calarum* v. *Chengappa, I. L. R. 13 Mad. 351, Manubeari, In re, 27 M. L. J. 392,* and *Re Rosario Quadros, I. L. R. 38 Mad. 551,* followed. *Rowson* v. *Hanama Mestri, I. L. R. 1 Mad. 280,* and *High Court Proceedings, dated 13th July 1867, 3 Mad. H. C. R., App. XXV,* disapproved. KUNHI MOIDIN *v.* CHAMU NAIR (1917).
I. L. R. 41 Mad. 182

———— s. 2—*Advance given by employer on agreement by workmen to work for him for a certain specified period—Breach of agreement.* A workman living in Cawnpore took an advance of Rs. 10 from his employer and entered into an agreement to work for him for ten months on the understanding that one rupee was to be deducted from his wages each month. *Held,* that such a contract contained nothing repugnant to Act No. XIII of 1859 and was capable of being enforced under the provisions of ss. 2 and 3 of that Act. *Lucas* v. *Ramai Singh,* Criminal Revision No. 235 of 1910, decided on the 21st of July, 1910, followed. EMPEROR *v.* BAKHTAWAR (1918) . . . **I. L. R. 40 All. 282**

WRIST-WATCH BAND.

See DESIGN . . **I. L. R. 45 Calc. 606**

WRITTEN STATEMENT.

——— refusing application to file—

See APPEAL . **I. L. R. 45 Calc. 818**

WRONGFUL CONFINEMENT.

See PENAL CODE (ACT XLV OF 1860), S. 343 . . **I. L. R. 42 Bom. 181**

Z

ZEMINDARI.

——— impartible—

See HINDU LAW—JOINT FAMILY. **I. L. R. 41 Mad. 778**

CALCUTTA : PRINTED BY SUPDT. GOVT. PRINTING, INDIA, 8, HASTINGS STREET.